

5-10-2011

State v. Vargas Clerk's Record Dckt. 38274

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VOL. 1 of 2

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,

LAW CLERK

Plaintiff / Respondent,

vs.

ABRAHAM VARGAS,

Defendant / Appellant,

Appealed from the District Court of the Fifth
Judicial District for the State of Idaho,
in and for Cassia County
Honorable Michael R. Crabtree, District Judge

Lawrence Wasden

Attorney for Plaintiff/Respondent

Brian M. Tanner

Attorney for Defendant/Appellant

Filed this _____ day of _____, 2010



Clerk

Deputy

38274
COPY

**IN THE SUPREME COURT
OF THE STATE OF IDAHO**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
	)	SUPREME COURT DOCKET NO. 38274-2010
vs.)	
	)	DISTRICT COURT CASE NO. CR 2010-2088*D
ABRAHAM VARGAS,)	
)	
Defendant/Appellant,)	
)	
)	

CLERK'S RECORD ON APPEAL

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

THE HONORABLE MICHAEL R. CRABTREE
DISTRICT JUDGE

Lawrence Wasden
Attention: Appellate Unit
700 West Jefferson Street
Boise, ID 83720-0010

Brian M. Tanner
516 Hansen Street E
Twin Falls, ID 83301

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Time: 02:40 PM

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Fifth Judicial District Court - Cassia County

ROA Report

User: POLLARD

Case: CR-2010-0002088 Current Judge: Michael R Crabtree

Defendant: Vargas, Abraham

State of Idaho vs. Abraham Vargas

Felony

Date		Judge
03/24/2010	New Case Filed - Felony	Magistrate Court Clerks
	Criminal Complaint	Magistrate Court Clerks
	Affidavit In Support of Criminal Complaint	Magistrate Court Clerks
	Bond Posted - Surety (Amount 25000.00)	Magistrate Court Clerks
	Hearing Scheduled (Preliminary 04/02/2010 09:00 AM)	Rick L Bollar
	Arraignment Sheet	Mick Hodges
	Bond set @ \$25,000.00	Mick Hodges
	Court Minutes	Mick Hodges
	Order and Notice of Hearing	Mick Hodges
03/30/2010	Notice Of Entry of Appearance	Mick Hodges
	Request For Discovery	Mick Hodges
03/31/2010	State's Response To Discovery Request	Mick Hodges
04/01/2010	Time Waiver for Preliminary Hearing	Rick L Bollar
	Motion to Continue Preliminary Hearing	Rick L Bollar
04/02/2010	Continued (Preliminary 04/09/2010 09:00 AM)	Rick L Bollar
	Order to Continue Preliminary Hearing	Rick L Bollar
	Notice of Hearing	Rick L Bollar
	Subpoena Returned **D Renz	Rick L Bollar
04/08/2010	Subpoena Returned-Noah Shiner	Rick L Bollar
	Subpoena Returned-Daniel Wayne Renz	Rick L Bollar
	Subpoena Returned-Mark Merrill	Rick L Bollar
	First-State's Supplemental Discovery Response	Rick L Bollar
04/09/2010	Court Minutes	Rick L Bollar
	Hearing type: Preliminary	
	Hearing date: 4/9/2010	
	Time: 9:25 am	
	Courtroom:	
	Court reporter:	
	Minutes Clerk: Connie Uriguen	
	Tape Number: mag	
	Defense Attorney: Brian Tanner	
	Prosecutor: Blaine Cannon	
	Continued (Preliminary 04/23/2010 09:00 AM)	Rick L Bollar
	Notice Of Hearing	Rick L Bollar
	Subpoena Returned-Mark Merrill - NOT FOUND	Rick L Bollar
1/13/2010	Second State's Supplemental Discovery Response	Rick L Bollar
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1/20/2010	Subpoena Returned-Kaye Young	Rick L Bollar
	Subpoena Returned-Erika Ruiz	Rick L Bollar
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Date: 12/10/2010

Time: 02:40 PM

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Fifth Judicial District Court - Cassia County

ROA Report

User: POLLARD

Case: CR-2010-0002088 Current Judge: Michael R Crabtree

Defendant: Vargas, Abraham

State of Idaho vs. Abraham Vargas

Felony

Date		Judge
04/23/2010	Preliminary Hearing Held	Rick L Bollar
	Notice of Hearing & Order for Defendant to Appear	Michael R Crabtree
	(Arraignment 05/18/2010 09:00 AM)	Michael R Crabtree
04/26/2010	Order of Transmittal to the District Court	Rick L Bollar
04/27/2010	Information: Grand Theft by Possession	Michael R Crabtree
05/18/2010	Court Minutes	Michael R Crabtree
	Hearing type: Arraignment	
	Hearing date: 5/18/2010	
	Time: 9:27 am	
	Courtroom:	
	Court reporter: Denise Schloder	
	Minutes Clerk: Tara Gunderson	
	Tape Number:	
	Defense Attorney: Brian Tanner	
	Prosecutor: Blaine Cannon	
	Hearing result for Arraignment held on 05/18/2010 09:00 AM: Arraignment	Michael R Crabtree
	/ First Appearance	
	Appear & Plead Not Guilty	Michael R Crabtree
	Hearing Scheduled (Pretrial Conference 07/13/2010 09:30 AM)	Michael R Crabtree
	Hearing Scheduled (Jury Trial 07/28/2010 09:00 AM)	Michael R Crabtree
	Notice of Hearing and Order for Defendant to Appear	Michael R Crabtree
	Order Regarding Jury Selection Procedure- Criminal Case	Michael R Crabtree
	Pretrial Scheduling Order	Michael R Crabtree
05/19/2010	Request For Discovery	Michael R Crabtree
06/04/2010	Motion for Jury Instructions	Michael R Crabtree
06/09/2010	Subpoena Returned-Manuel Santos	Michael R Crabtree
	Subpoena Returned-Daniel Wayne Renz	Michael R Crabtree
	Subpoena Returned-Mark Merrill	Michael R Crabtree
	Subpoena Returned-Brice Nelson	Michael R Crabtree
	Subpoena Returned-Noah Shiner	Michael R Crabtree
06/14/2010	Subpoena Returned-Kaye Young	Michael R Crabtree
06/25/2010	Motion to Suppress	Michael R Crabtree
	Memorandum In Support of Motion to Suppress	Michael R Crabtree
	Affidavit of Brian M. Tanner	Michael R Crabtree
	Subpoena Returned-Eric J Staley	Michael R Crabtree
3/28/2010	Continued (Pretrial Conference 07/13/2010 10:30 AM) Motion to Suppress	Michael R Crabtree
	Motion re: Jury Instructions	
	Notice of Hearing - PTC - Motion to Suppress; Motion re: Jury Instruction	Michael R Crabtree
	4th State's Supplemental Discovery Response	Michael R Crabtree
7/07/2010	Subpoena Returned-Daniel Wayne Renz	Michael R Crabtree
7/12/2010	Fifth State's Supplemental Discovery Response	Michael R Crabtree

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Date: 12/10/2010

Time: 02:40 PM

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Fifth Judicial District Court - Cassia County

ROA Report

User: POLLARD

Case: CR-2010-0002088 Current Judge: Michael R Crabtree

Defendant: Vargas, Abraham

State of Idaho vs. Abraham Vargas

Felony

Date		Judge
07/13/2010	Continued (Pretrial Conference 07/21/2010 03:00 PM) Info filed: 4/27/2010 # 6 set for trial on July 28 Motion to Suppress Motion re: Jury Instructions Notice of Hearing and Order for Defendant to Appear	Michael R Crabtree
07/21/2010	Court Minutes Hearing type: Motion to Suppress / PTC / Motion re: Jury Se Hearing date: 7/21/2010 Time: 3:07 pm Courtroom: Court reporter: Denise Schloder Minutes Clerk: Tara Gunderson Tape Number: Defense Attorney: Brian Tanner Prosecutor: Blaine Cannon Continued (Pretrial Conference 07/27/2010 08:45 AM) Info filed: 4/27/2010 Counsel for the defendant is to call in Notice of Hearing and Order for Defendant to Appear	Michael R Crabtree Michael R Crabtree
07/22/2010	(State's) Jury Trial Witness List Order DENYING Defendant's Motion to Suppress	Michael R Crabtree Michael R Crabtree
07/26/2010	Plaintiff's requested Jury Instructions	Michael R Crabtree
07/27/2010	Court Minutes Hearing type: Jury Trial Hearing date: 7/28/2010 Time: 11:50 am Courtroom: Court reporter: Minutes Clerk: Connie Uriguen Tape Number: Defense Attorney: Brian Tanner Prosecutor: County Prosecutor Hearing result for Pretrial Conference held on 07/27/2010 08:45 AM: Hearing Held	Michael R Crabtree Michael R Crabtree
07/28/2010	Court Minutes Hearing type: Jury Trial Hearing date: 7/28/2010 Time: 8:26 am Courtroom: Court reporter: Denise Schloder Minutes Clerk: Tara Gunderson Tape Number: Defense Attorney: Brian Tanner Prosecutor: Blaine Cannon Hearing result for Jury Trial held on 07/28/2010 09:00 AM: Jury Trial Started	Michael R Crabtree Michael R Crabtree
7/29/2010	Found Guilty After Trial (118-2407(1) Theft-Grand) Roll Call of jurors Peremptory Challenges Seating chart	Michael R Crabtree Michael R Crabtree Michael R Crabtree Michael R Crabtree

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State of Idaho vs. Abraham Vargas

Felony

Date		Judge
07/29/2010	Preliminary Jury Instructions and Final Jury Instructions	Michael R Crabtree
	Verdict Of The Jury	Michael R Crabtree
	Notice of Hearing and Order for Defendant to Appear	Michael R Crabtree
	Order To Attend Psi Interview & Appear For Sentencing	Michael R Crabtree
	Pre-Sentence Investigation Evaluation Ordered	Michael R Crabtree
	Hearing Scheduled (Sentencing 09/24/2010 11:00 AM)	Michael R Crabtree
	Court Minutes	Michael R Crabtree
	Hearing type: Status	
	Hearing date: 7/27/2010	
	Time: 8:50 am	
	Courtroom:	
	Court reporter: Denise Schloder	
	Minutes Clerk: Tara Gunderson	
	Tape Number:	
	Defense Attorney: Brian Tanner	
	Prosecutor: Blaine Cannon	
08/19/2010	Continued (Sentencing 10/12/2010 11:00 AM)	Michael R Crabtree
	Notice of Hearing Vacated and Reset	Michael R Crabtree
09/15/2010	Pre-Sentence Investigation Report	Michael R Crabtree
	Document sealed	
10/08/2010	ADDENDUM Pre-Sentence Investigation Report	Michael R Crabtree
	Document sealed	
10/12/2010	Court Minutes	Michael R Crabtree
	Hearing type: Sentencing	
	Hearing date: 10/12/2010	
	Time: 11:40 am	
	Courtroom:	
	Court reporter: Denise Schloder	
	Minutes Clerk: Tara Gunderson	
	Tape Number:	
	Defense Attorney: Brian Tanner	
	Prosecutor: Blaine Cannon	
	Hearing result for Sentencing held on 10/12/2010 11:00 AM: Hearing Held	Michael R Crabtree
	Judgment of Conviction and Order Suspending Sentence and Granting Probation	Michael R Crabtree
	Probation Ordered (I18-2407(1) Theft-Grand) Probation term: 3 years. (Supervised)	Michael R Crabtree
	Sentenced To Incarceration (I18-2407(1) Theft-Grand) Confinement terms: Credited time: 2 days. Discretionary: 180 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 2 years.	Michael R Crabtree
1/15/2010	Appealed To The Supreme Court	Michael R Crabtree
1/24/2010	Clerk's Record /Reporter's Transcript Suspended	Michael R Crabtree
	Order Conditionally Dismissing Appeal	Michael R Crabtree
2/06/2010	Bond Exonerated (Amount 25,000.00)	Michael R Crabtree
	Bond Posted - Cash (Receipt 13958 Dated 12/6/2010 for 100.00)	Michael R Crabtree

000013

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

FILED
2010 MAR 24 PM 3:16
TW

6 Attorneys for State of Idaho

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA
9 MAGISTRATE DIVISION

10 **STATE OF IDAHO,**

Case No. CR 2010-2088

11 Plaintiff,

12 vs.

CRIMINAL COMPLAINT

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____

16 PERSONALLY APPEARED before me this 22 day of March, 2010,
17 in the County of Cassia, State of Idaho, Jeanette Hayden, who being first
18 duly sworn, deposes and says:

19 **GRAND THEFT BY POSSESSION**

20 That the defendant, ABRAHAM CEJA VARGAS, on or about the 22nd day of
21 March, 2010, in the County of Cassia, State of Idaho did feloniously and knowingly possess stolen
22 property, to-wit: tubing shafts and piping, of a value in excess of One Thousand Dollars (\$1000.00).
23 the property of Oakley Idaho Crops, knowing the property to have been stolen by another, or under
24 circumstances as would reasonably induce him to believe that the property was stolen, and with the
25 intent to deprive the owner permanently of the use or benefit of the property. All in violation of
26 Idaho Code Sections 18-2403(4) and 18-2407(1), a felony.

27
28 **CRIMINAL COMPLAINT - 1**

H:\Shantel\County Criminal Comp. Aff. Warr. Summons FELONIES Defen.Janis-Felony Comp-Grand Theft-Vargas.wpd

000014

1 All of which is contrary to the form, force and effect of the statute in such case
2 made and provided, and against the peace and dignity of the State of Idaho.

3 Said complainant, therefore, prays that a Warrant of Arrest be issued for
4 the above named defendant so that he may have his day in court and be dealt with according to law.

5
6 Flayce
Complainant

7
8 SUBSCRIBED AND SWORN to before me this 24th day of March, 2010.

9
10 [Signature]
Magistrate

11
12 **DEMAND FOR NOTICE OF ALIBI DEFENSE**

13 Pursuant to Section 19-519, Idaho Code, the Prosecuting Attorney of Cassia County,
14 State of Idaho, or his Deputy, does hereby make written demand upon the defendant named in the
15 above and foregoing Complaint and that the defendant shall serve within ten (10) days or at such
16 different times as the Court may direct, upon the Prosecuting Attorney of Cassia County, State of
17 Idaho, at P.O. Box 7, Burley, Idaho 83318, a written notice of his intention to offer a defense of
18 alibi. Such notice shall state the specific place or places at which the defendant claims to have
19 been at the time of the alleged offense and the names and addresses of the witnesses upon whom he
20 intends to rely to establish such alibi.

21
22 DATED this 24th day of March, 2010.

23
24 By [Signature]
25 Prosecuting Attorney's Office
26
27
28

CRIMINAL COMPLAINT - 2

H: Shantel County Criminal Comp. ME Warr. Summons FELONY Defendants-Felony Comp Grand Theft-Vargas.wpd

000015

1 ALFRED E. BARRUS (ISB #1704)
Prosecuting Attorney
2 BLAINE P. CANNON (ISB #5575)
Deputy Prosecuting Attorney
3 DALLIN J. CRESWELL (ISB #7741)
Deputy Prosecuting Attorney
Cassia County, Idaho
1918 Overland Avenue
4 Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile 208.878.2924

2010 MAR 24 PM 3:16

TW

6 Attorneys for State of Idaho

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA
10 MAGISTRATE DIVISION

11 STATE OF IDAHO,

Case No. CR 2010-2088

12 Plaintiff,

13 vs.

AFFIDAVIT IN SUPPORT
OF CRIMINAL COMPLAINT

14 ABRAHAM CEJA VARGAS,

15 Defendant.

16
17 STATE OF IDAHO)
County of Cassia) ss.

18 COMES NOW, Jeanette Hayden, being first duly sworn on oath,
19 deposes and states as follows:
20

21 1. That I am employed as a Deputy Sheriff for the Cassia County Sheriff's
22 Office, State of Idaho, and I have personal knowledge or have been informed of the following
23 events.

24 2. That on March 22, 2010, Deputy Mark Merrill was dispatched to 150 West
25 700 South in Burley, Cassia County, Idaho, for a report of theft. Upon arrival, Deputy Merrill made
26 contact with Erick Culver who is working for Oakley Idaho Crops which is owned by Kay Young.
27 Erick stated that they are putting in some new pipes for a pump system at the location and when he
28 returned to work on March 22, 2010, he discovered pieces of their supply was missing. Seventeen

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT - 1

H. Shanel County Criminal Comp. Aff. Warr. Summons I FLONIES Defendants, Felony Aff. Grand Theft-Vargas.mpd

000016

1 total tubing shafts were taken from inside the tubes that they were laying in. They were ten feet in
2 length and valued at approximately \$800 per unit. The estimated total loss is \$13,600.00.

3 3. That on March 22, 2010, Deputy Noah Shiner was dispatched to Santos
4 Recycling. Dispatch advised that Kaye Young was at the location and had located some of the
5 missing pipe. Upon arrival, Deputy Shiner spoke with Kaye who stated that he located a bunch of
6 the tubing and he showed Deputy Shiner a large pile of the pipes and identified the pipes as the ones
7 missing. Deputy Shiner spoke with the clerk at Santos who stated that a male subject arrived at
8 approximately twenty minutes prior with the pipes. She stated that there were two males involved
9 and they had been there three or four times earlier in the day and two visits were with the pipes.
10 The clerk gave Deputy Shiner a copy of the driver's identification and she he was driving an older
11 red and white Chevy or GMC single cab pickup. The copy of the identification identified the driver
12 as Abraham Vargas residing at 1800 Almo Avenue in Burley. The clerk also stated that the male
13 subject never came inside the office and he had his passenger pick up the money. The clerk showed
14 Deputy Shiner copies of the logs which showed Miguel Magana is who signed for the money. The
15 clerk also stated that Abraham was in twice on March 20, 2010, with pipe. On that day, Abraham
16 signed for the money. There was a total of 3220 pounds of pipe brought in on March 20, 2010 and
17 2190 pounds of pipe on March 22, 2010.

18 4. That on March 23, 2010, Deputy Mark Merrill went to 1800 Almo Avenue,
19 Burley, Cassia County, Idaho, to attempt to interview Abraham Vargas. Upon arrival, Deputy
20 Merrill observed a male subject sitting inside a red and white older model pickup that matched the
21 description given by employees at Santos Recycling. Deputy Merrill approached the vehicle and the
22 male subject exited the vehicle. Deputy Merrill identified himself as a deputy sheriff and asked the
23 male subject for his name. The male subject stated that he was Abraham Vargas. Deputy Merrill
24 asked for identification and Mr. Vargas showed Deputy Merrill an Idaho driver's license that
25 matched the color copy that was obtained by the staff at Santos Recycling. Deputy Merrill asked
26 Mr. Vargas if he would speak with him and Mr. Vargas asked if Deputy Merrill spoke Spanish.
27 Abraham stated that he only spoke Spanish. Deputy Merrill requested a Spanish speaking officer to
28 respond and Detective Dan Renz responded to the location. Detective Renz spoke with Mr. Vargas.

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT - 2

11 Shapell County Criminal Comp. Aff Warr. Summons FELONIES Defendants-Felony Aff-Grand Theft Vargas.wpd

000017

1 Mr. Vargas initially denied taking metal to Santos Recycling. Detective Renz confronted Mr.
2 Vargas with the color photo copy of his Idaho driver's license that Santos Recycling made when he
3 sold the scrap on March 20, 2010. Mr. Vargas admitted that he did take two loads of metal to
4 Santos Recycling. Mr. Vargas stated that a man by the name of Salvador Sanchez obtained the
5 metal from a farmer in Minidoka. Detective Renz determined that Mr. Vargas needed to go to the
6 Cassia County Sheriff's Office for further questioning. Deputy Merrill transported Mr. Vargas to
7 the Sheriff's Office.

8 5. That at the Sheriff's Office, Detective Renz interviewed Mr. Vargas.
9 Detective Renz read Mr. Vargas his constitutional rights in Spanish and Mr. Vargas acknowledged
10 that he understood his rights and he signed a waiver agreeing to speak with Detective Renz. Mr.
11 Vargas admitted that he drove scrap metal to Santos Recycling on March 20, 2010 and March 22,
12 2010, in his pickup. Mr. Vargas explained that on March 20, 2010, a male named Salvador Sanchez
13 came to his residence and borrowed Mr. Vargas' pickup. Mr. Vargas stated that Sanchez lives in
14 Heyburn but he does not know where. Mr. Vargas stated that Sanchez does not have a telephone.
15 Mr. Vargas stated that Sanchez left in the pickup and returned with a load of scrap metal. Mr.
16 Vargas stated that he drove the pickup to Santos Recycling where he sold the scrap. Mr. Vargas
17 stated that he and Sanchez then drove to a landfill near Paul and obtained more scrap metal. Mr.
18 Vargas stated that he drove to Santos Recycling where he sold the scrap. Mr. Vargas stated that he
19 gave the money to Sanchez. Mr. Vargas stated that Sanchez paid him \$20 for gas for each trip.

20 6. That Mr. Vargas stated that on March 22, 2010, Miguel Magana showed up
21 at his residence and borrowed Mr. Vargas' pickup. Mr. Vargas stated that Magana lives in Rupert
22 but he does not know where. Mr. Vargas does not know a phone number for Magana. Mr. Vargas
23 stated that Magana left with his pickup and returned with some scrap metal. Mr. Vargas stated that
24 he drove the pickup with the scrap metal to Santos Recycling where Magana sold the metal. Mr.
25 Vargas stated that Magana left with his pickup again and returned to his residence later with some
26 more scrap. Mr. Vargas stated that drove the pickup to Santos Recycling where Magana sold the
27 metal. Mr. Vargas admitted that the scrap contained some metal tubes. Mr. Vargas stated that he
28 did not know the metal was stolen. Mr. Vargas admitted that he suspected that it might be stolen.

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT - 3

H: Shantel County Criminal Comp. Aff. Warr. Summons-FELONIES Defendants-Felony-Aff-Grand Theft-Vargas.wpd

000018

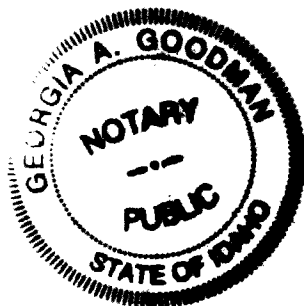
1 Mr. Vargas stated that he did not ask about the metal. Mr. Vargas indicated that he was told or
2 thought that the metal was given as a gift to his friends. Mr. Vargas stated that neither Sanchez nor
3 Magana currently have a job. Mr. Vargas admitted that it did not make sense why someone would
4 give his friends so much scrap metal. Detective Renz asked Mr. Vargas why he initially lied to him
5 about taking scrap to Santos Recycling and Mr. Vargas admitted that it was because he thought the
6 metal might be stolen.

7 7. That Mr. Vargas was placed under arrest for grand theft by possession and
8 transported to the Mini-Cassia Criminal Justice Center.

9 WHEREFORE, your affiant prays that a Warrant be issued for the Defendant so that
10 he may be dealt with according to law.

11
12 [Signature]
13 Affiant

14 SUBSCRIBED AND SWORN to before me this 24th day of March, 2010.



[Signature]
Notary Public for Idaho
Residing at: Bruley, Id
Commission Expires: 10-21-2015

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT - 4

H Shantel County Criminal Comp. Aff. Warr. Summons FELONIES Defendants-Felony:Aff Grand Theft-Vargas wpd

000019

IN THE DISTRICT COURT, FIFTH JUDICIAL DISTRICT, STATE OF IDAHO, CASSIA COUNTY

MAGISTRATE COURT
CASSIA COUNTY ID

FILED

State of Idaho,
Vs.
Abraham Vargas

Case No: CR-2010-0002088 P 3:26
2010 MAR 24
Arraignment / 1st Appearance Minutes

Today's Date: March 24, 2010

☒ Interpreter Required

Mailing Address: 1800 Almo Parkway, ID 83319

Charges: () Misdemeanor (x) Felony Prosecutor: () City (x) County () Immigration Hold

In custody appearance: (x) Yes () No () Defendant Failed to Appear

Probable Cause Affidavit on File: (x) Yes () No () Refer to Pros. for I.C.19-3901A charge

Defendant advised of rights: () in person () in writing (x) by videotape

- ☐ Right to remain silent and not incriminate self
- ☐ Right to jury trial
- ☐ Right to confront and cross-examine evidence and witnesses
- ☐ Right to be represented by counsel
- ☐ Right to speedy trial
- ☐ Right to present evidence on own behalf
- ☐ State must prove guilt beyond a reasonable doubt
- ☐ Right to appeal

Charge(s)	I.C. Section	Max Penalty
I: Theft-Grand	118-2407(1)	14 years / 15,000 fine
II:		
III:		
IV:		
V:		
VI:		

Defendant advised of nature of charge(s) and penalties: ☒ Yes

Counsel: ☒ Public Defender () Waives counsel () Retain counsel: Pro. Atty
() Public Defender denied:

Plea Entered [Misdemeanor]: ☒ Not Guilty () Guilty () Plea Entry Cont'd: _____, 20____

Next Court Date: April 2, 2010 Time: 9:00 a.m.
() PTC ☒ Preliminary Hearing () Sentencing () Other: _____

Bail: ☒ Cash or surety \$ 25,000 () O.R. () Additional conditions below:
() No possession or consumption of alcohol or controlled substances
() U.A.'s at Misdemeanor Probation _____ times / week beginning upon release
() Alcohol breath test at _____ Mini-Cassia Criminal Justice Center as follows: _____
() Other: _____
() Fail to test or positive test results in immediate arrest warrant, bail \$ _____
() No Contact Order Issued

Notes: _____

Judge: [Signature]

000020



American Contractors Indemnity Company

A member ICC Surety Group

601 S. Figueroa St., Suite

JG, Los Angeles, CA 90017-5529

DEC 29 2010

POWER OF ATTORNEY

A30-2112874

POWER NO.

KNOW ALL MEN BY THESE PRESENTS that the American Contractors Indemnity Company, a corporation duly organized and existing under the laws of the State of California and by the authority of the Resolution adopted by the Board of Directors by unanimous written consent on December 8, 1999 which said Resolution has not been amended or rescinded, does constitute and appoint and empower these presents does make, constitute and appoint the named agent:

R. James Gilman its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surely, a bail bond/any Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel restriction, fines, restitution, payment of damages, or any other condition imposed by a court not specifically related to court appearance.

This Power-of-Attorney is for use with Bail Bonds only, not valid if used in connection with Immigration Bonds. This power void if altered or amended, void if used with other powers of this company or in combination with powers from any other surety company. void if used to furnish bail in excess of the stated amount of this Power, and can only be used once. The obligation of the company shall not exceed the sum of:

SHALL NOT EXCEED THE SUM OF THIRTY THOUSAND DOLLARS (\$30,000.00)

and, provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, AMERICAN CONTRACTORS INDEMNITY COMPANY has caused these presents to be signed by its duly authorized officers, proper for the purpose and its corporate seal to be hereunto affixed this _____ of _____.

Bond Amount: \$25,000.00Defendant: Leopoldo Caza VargasCharges: Grand TheftCourt / Date: 4-2-10 9AMCase No.: DR10-2085City: Beverly State: ed

If rewrite, original No. _____

Attorney-in-Fact: R. James GilmanBy: Adam S. Poon
Adam S. Poon, PresidentBy: Scott D. Aschultz
Scott D. Aschultz, Vice-President



American Contractors Indemnity Company

9841 Airport Blvd., 9th Floor
Los Angeles, CA 90045
(310) 649-2663

2010 MAR 24 PM 6:00

APPEARANCE BOND

IN THE First District COURT, STATE OF
IDAHO

STATE OF IDAHO,

Plaintiff

vs.

COUNTY OF Cassia

Abraham Ciza Vargas
Defendant

KNOW ALL MEN BY THESE PRESENTS:

That we, American Eagle Bail Bond, as Principal and
American Contractors Indemnity Company, as Surety, identified by attached Power of Attorney
Number _____, are held firmly bound unto the Governor of the State of Idaho, and his
successors, the said _____, Principal, in the sum of _____

Dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that the above named Defendant shall personally appear in the above
Court on April 2, at 9 AM o'clock, _____ M, to answer to
the charge of Grand Theft, and to do and receive
what shall be by said Court then and there enjoined upon him, and shall not depart the said Court without
leave, and meanwhile shall be of good behavior toward all people of the State of Idaho then this
obligation shall be void, otherwise in full force and effect, but not to exceed beyond the time of the verdict
of the jury, or a plea of guilty by the Defendant, except will at all times hold himself amenable to the orders
and process of the Court, and if convicted, will appear for judgment and render himself in execution
thereof, or if he fails to perform either of these conditions, that we will pay to the people of the State of
Idaho the sum of Twenty five thousand.

Taken before and approved by me:

(L.S.)

RICK FILKINS
AMERICAN EAGLE BAIL BONDS
P. O. BOX 851
KETCHUM, ID 83340

American Contractors Indemnity Company

By _____

By R. Tom [Signature]
Attorney-in-Fact

THIS APPEARANCE BOND NOT VALID UNLESS ACCOMPANIED BY AN INDIVIDUALLY NUMBERED POWER OF
ATTORNEY PROPERLY EXECUTED

This bond not valid if more than one (1) Power of Attorney has been attached.

CASE # 02-10-2088
DATE 3-24-10
JUDGE Hodges
CLERK Connie
COURTROOM TV
INTERPRETER Yacine

MAGISTRATE COURT
CASSIA COUNTY ID
FILED CU
2010 MAR 24 P 3:26

STATE
PLAINTIFF
-VS-
PLAINTIFF'S ATTORNEY
Abraham Vargas
DEFENDANT
DEFENDANT'S ATTORNEY

Proceedings: () Motion () Trial () Sentencing ☒ Arraignment () Other
Public Defender Appointed () Yes () No () Waive Counsel ☒ Retain Counsel 30959
Rights 30953 Charges & Penalties 30922 ☒ Not Guilty () Guilty 31032
Bond \$25,000.00 Hearing Pretrial 4-2-10 @ 9AM

Index Action

30929 Dated 1800 Alma Ave Barley
Questions about rights? Bond?

Fines: Court Costs: Suspended: P.D. Fees:
Jail Time: Suspended: Time Credit Discretionary: Com. Service
Suspended D.L.: Absolute: Probation: months**level I **level II** \$50**
Court Alcohol School: Counseling: Outpatient: Other:

Court Minutes

000023

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT, STATE OF IDAHO, ID
CASSIA COUNTY, MAGISTRATE DIVISION

MAGISTRATE COURT

CASSIA COUNTY, ID

FILED

State of Idaho, Plaintiff

Case No. CR ~~200 MAR 24 P 3-26~~

-vs-

ORDER and NOTICE OF HEARING

Abraham Vargas Defendant)

☒ Felony ☐ Misdemeanor
Other: _____

() The Public Defender is appointed to represent Defendant or _____.
The Defendant is required to:

- () Personally go to the Public Defender's office within 24 hours of release from custody, or meet with the Public Defender today if not in custody.
- () Meet with the Public Defender on Monday, _____, 20____ at 9:00 a.m., at the Cassia County Courthouse, 2nd Floor.

() The Conflict Public Defender _____ is appointed to represent _____, compensation at the rate authorized by Cassia County, Idaho. Defendant must personally go to the conflict public defender's office no later than 24 hours from the date of this Order.

() The Defendant is required to reimburse Cassia County, Idaho for Public Defender services in the minimum amount of \$ _____ or () amount to be determined. Make payment to the Clerk of the Court on or before _____, 20____.

☒ The Defendant is required to personally appear in Court as set forth below:

Date: April 2, 2010 Time: 9.00, A.M.

- () Arraignment ☒ Preliminary Hearing
- () Pre-trial Conference ☐ Trial
- () Sentencing (fine and court costs must be paid on the date of sentencing).
- () Other: _____

Date: 3-24, 2010.

Judge: [Signature]

Defendant Certifies as Follows:

I certify that I received a copy of this Order today. I understand that violation of this Order may result in a warrant for my arrest being issued, or forfeiture of the bond that was posted for my release from custody.

Date: 3-24, 2010.

Defendant's signature: Abraham Vargas

Address: _____

Interpreter: _____

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Fascimile: (208) 734-2383
Idaho State Bar #7450

2010 MAR 30 AM 10:01

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO

Plaintiff,

v.

ABRAHAM VARGAS,

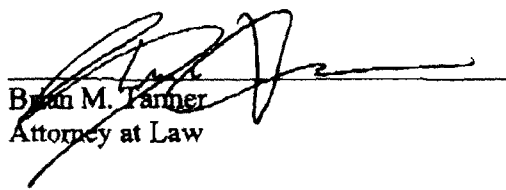
Defendant.

Case No. CR. 2010- 2088

NOTICE OF ENTRY OF APPEARANCE

NOTICE IS HEREBY GIVEN that Brian Tanner, Attorney at Law is entering an appearance for the defendant in the above-entitled action. It is hereby requested that all pleadings, correspondences and other matters be served upon substitute counsel, at 516 Hansen St. E., Twin Falls, ID 83301.

DATED this 29th day of March, 2010


Brian M. Tanner
Attorney at Law

NOTICE OF ENTRY OF APPEARANCE

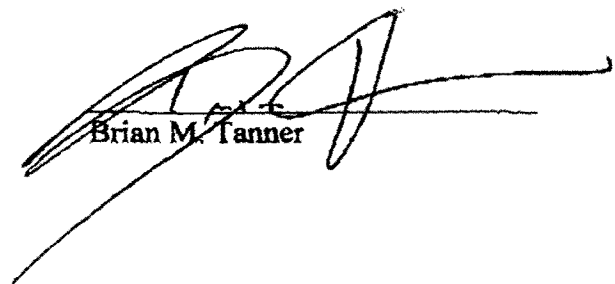
000025

CERTIFICATE OF DELIVERY

I hereby certify that on the ¹²29 day of March, 2010, I delivered a copy of the foregoing
NOTICE ENTRY OF APPEARANCE AND REQUEST FOR DISCOVERY to the following:

Cassia County Prosecutor

FAX ☒


Brian M. Tanner

000026

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CLL
200 FEB 30 A 1:51

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO

Plaintiff,

v.

ABRAHAM VARGAS

Defendant.

Case No. CR. 10-2088

REQUEST FOR DISCOVERY

TO: Cassia County Prosecutor

The Defendant in the above-entitled case by and through his/her attorney, Brian Tanner, does hereby request, pursuant to Rule 16 of the Idaho Criminal Rules, discovery and inspection of the following information, evidence and materials.

1) Pursuant to Idaho Code § 18-6708, Rule 16 of the Idaho Criminal Rules, Article 1 §13 of the Idaho Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, and United States Code Annotated 18-2518, the Defense requests immediate disclosures of the dates and times of any interceptions of any wire or oral communications of Defendant, the contents of any wire or oral communications of Defendant or evidence derived therefrom, a copy of the application and Order authorizing interception of any oral or wire

communications of defendant, the date of the entry and the period authorized, any authorization to intercept wire or oral communications of Defendant or intercept surveillance of telephones listed in Defendant's name, or at Defendant's home or place of business.

2) The Defense requests access to the original tapes of all taped telephone contacts and/or "body wire" surveillance contacts by any person at any time with the Defendant and/or other persons during the course of the criminal investigation of the Defendant.

3) The Defense requests a copy of any written agreement of cooperation with any witness expected to be called at trial or who were utilized in the investigation of this criminal action, any and all Confidential Informant supervision documents, full records of payment to any Confidential Informant, police reports of any crimes in which any State's witness was suspect, the identity of any probation and/or parole officer that was supervising any State's witness, and any and all probation and/or parole records pertaining to any State's witness

4) Any material or information within your possession or control, or which hereafter comes into your possession or control, which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore. This request extends to material and information in the possession or control of members of your staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or with reference to the particular case have reported to the office of the prosecuting attorney:

5) Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence: and also the substance of any relevant oral statement made by the Defendant whether before or after arrest to a peace

officer, prosecuting attorney, or his agent: and any recorded testimony of the Defendant before a grand jury which relates to the offense charged:

6) The prior criminal record of the Defendant, if any, as is now or may become available to the prosecuting attorney:

7) Any written or recorded statements of a co-defendant: including but not limited to the substance of any relevant oral statements made by a co-defendant, whether before or after arrest in response to interrogation by any person:

8) Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the Defendant:

9) Any results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with a particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence:

10) A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at trial, together with any record of prior convictions of any such person which is within the knowledge of the prosecuting attorney or his agents or to any official involved in the investigatory process of the case:

11) The statements made by the above listed prosecution witness or any prospective prosecution witnesses to the prosecuting attorney or his agents or to any official involved in the investigatory process of this case:

REQUEST FOR DISCOVERY AND INSPECTION -3-

000029

12) Any reports and memoranda in your possession which were made by a police officer or investigator in connection with the investigation or prosecution of the case.

13) The Defense requests pursuant to Idaho Rule of Criminal Procedure 16(b)(8) and I.R.E. 705 that the Prosecution provide the Defense with the qualifications of any person to be tendered as an expert witness in this prosecution pursuant to IRE 702: the facts and data upon which the offered expert bases any opinion or inference they will be offering in this prosecution: a complete content of any expert opinion the prosecution will offer as assisting the trier of fact to understand the evidence or determine any fact at issue in this criminal prosecution.

Defendant requests that the above information be delivered to counsel within fourteen (14) days of the date of this request.

DATED This 29th day of March, 2010

By: 

Brian M. Tanner
Attorney at Law

1 ALFRED E. BARRUS (ISB #1704)
Prosecuting Attorney
2 BLAINE P. CANNON (ISB #5575)
Deputy Prosecuting Attorney
DALLIN J. CRESWELL (ISB #7741)
Deputy Prosecuting Attorney
3 Cassia County, Idaho
1918 Overland Avenue
4 Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile 208.878.2924

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088 M

11 Plaintiff,

12 vs.

STATE'S RESPONSE
TO DISCOVERY REQUEST

13 ABRAHAM CEJA VARGAS,

14 Defendant.
_____ /

15 COMES NOW the State of Idaho and submits the following Response to the Request
16 for Discovery:

17 1. Exculpatory or Mitigating Evidence. The State holds no evidence which tends to
18 negate the guilt of the accused as to the offense charged or which would tend to reduce the
19 punishment therefore. The State has given defendant copies of everything held in the prosecutor's
20 file, and pursuant to Idaho Criminal Rule 16(e)(1)B, makes available to the defendant relevant
21 police files.

22 Sometimes, by understanding the Defense theory of the case, the State can recognize
23 exculpatory evidence. If you wish to discuss the case with me, I will review my file for exculpatory
24 evidence.

25 2. Statement of Defendant. The nature of the defendant's statements are shown in
26 the following:

27 (a) Incident Report

28 RESPONSE TO REQUEST FOR DISCOVERY - 1

11 Shanel County Criminal Discovery Responses & Requests Response Discovery-Al upd

000031

1 3. Statement of the Co-Defendant: There is no co-defendant in the above-entitled
2 case.

3 4. Defendant's Prior Record: Defendant's prior record is enclosed.

4 5. Documents: Enclosed please find the following documents which might be
5 offered as exhibits at trial:

6 (a) Criminal History

7 (b) Criminal Complaint

8 (c) Affidavit in Support of Criminal Complaint

9 (d) Warrant of Arrest

10 (e) Incident Report 100300190

11 (f) Supplemental Report by Detective Daniel Renz

12 (g) Santos Mentals Recycling Log (3 pages)

13 (h) Copy of Driver's License

14 (i) DMV Record for 4C75127

15 (j) Constitutional Rights Warning (in Spanish)

16 (k) MCCJC Arrest and Property Record

17 (l) ISTARS Case History Report

18 6. Tangible Objects: The State may use any of the following objects as exhibits at
19 the trial and arrangements can be made with my office to inspect these objects:

20 (a) 911 Call / Radio Traffic

21 (b) Digital Photographs

22 (c) DVD Interview of Abraham Vargas

23 7. Reports of Examinations and Tests:

24 There are no examinations or tests related to the above-entitled case.

25 8. Witnesses. The State may call the following persons as witnesses at trial. To
26 prevent the unnecessary disclosure of personal identifying information, we are not providing you
27 with the telephone numbers or addresses of certain witnesses or victims. Please contact our office if
28

RESPONSE TO REQUEST FOR DISCOVERY - 2

H:\Shantel County Criminal Discovery Responses & Requests Response Discovery-AI wpd

000032

1 you need to contact a witness or victim.

2 (a) Mark Merrill, CCSO

3 (b) Erick Culver

4 (c) Kaye Young

5 (d) Daniel Renz, CCSO

6 (e) Noah Shiner, CCSO

7 (f) Miguel Magana

8 (g) Robert Taylor, CCSO

9 (h) Salvador Sanchez

10 9. Police Reports: Copies of relevant police reports are enclosed.

11 Pursuant to Idaho Criminal Rule 16(e)(1)B, the State has no objection to the
12 information, evidence and materials sought by the defendant. Defense counsel is invited to meet
13 with the officer and the State at a mutually convenient time and place to inspect and copy the
14 information, evidence and materials kept in the police files. Please contact me if you need help in
15 arranging such a time. Defense counsel has been provided copies of all documents kept in the
16 prosecutor's file.

17
18
19
20 DATED this 30th day of March, 2010.

21 ALFRED E. BARRUS
22 Prosecuting Attorney

23 
24
25
26
27
28

RESPONSE TO REQUEST FOR DISCOVERY - 3

H:\Shantel County Criminal\Discovery Responses & Requests-Response Discovery-Al.wpd

000033

1
2
3 **CERTIFICATE OF MAILING**

4 I hereby certify that on this 30th day of March 2010, I served a copy of
5 the within and foregoing State's Response to Defendant's Request for Discovery upon the attorney
6 named below in the manner noted:

7 Brian Tanner
8 Attorney at Law
9 516 Hansen Street East
10 Twin Falls, Idaho 83301

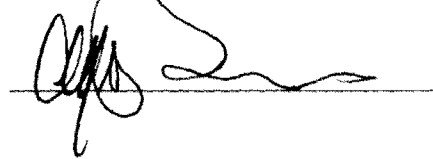
11 ☒ by depositing a copy thereof in the United State's mail, postage prepaid, in an envelope
12 addressed to said attorney at the foregoing address.

13 ☐ by hand delivering copies of the same to the office of the attorney at the address above
14 indicated.

15 ☐ by telecopying copies of the same to said attorney at his/her telecopy number of
16 _____, and then by mailing copies of the same in the United States Mail,
17 postage prepaid, at the Burley Post Office in Burley, Idaho.

18 ☐ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
19 Courthouse in Burley, Idaho.

20
21 ALFRED E. BARRUS
22 Prosecuting Attorney

23
24 
25
26
27
28

RESPONSE TO REQUEST FOR DISCOVERY - 4

H:\Shantel County Criminal Discovery Responses & Requests\Response Discovery-AI.wpd

000034

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CU
2010 APR -1 A 11:56

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

Abraham Ceja Vargas,

Defendant.

Case No. CR 2010 - 2088

TIME WAIVER FOR
PRELIMINARY HEARING

I understand that I have the right to have a preliminary hearing conducted within 14 days of my initial appearance if I am in custody, and within 21 days of my initial appearance if I have posted bail or have otherwise been released from custody. By executing this document, I preserve my right to have a preliminary hearing, but waive my right to have the preliminary hearing held within the above time constraints.

I further acknowledge that the preliminary hearing will be rescheduled at the court's convenience and that the preliminary hearing can be held beyond the times required by Idaho Criminal Rule 5.1. There have been no promises made to me in exchange for executing this waiver.

DATED this 1st day of April, 2010.

X Abraham Vargas
Defendant

[Signature]
Defense Attorney

TIME WAIVER FOR PRELIMINARY HEARING

000035

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

2010-1-17-10-10-10

IN THE MAGISTRATE COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO

Plaintiff,

v.

ABRAHAM CEJA VARGAS,

Defendant.

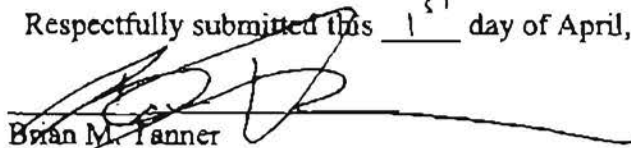
Case No. CR. 10-2088

MOTION TO CONTINUE PRELIMINARY
HEARING

COMES NOW, the above named Defendant, Abraham Ceja Vargas, by and through his attorney or record, Brian Tanner, and hereby moves this court to continue the defendant's preliminary hearing. This motion is based on the following.

1. The defendant has signed a time waiver of preliminary hearing.
2. Counsel has not had sufficient opportunity to review all discovery in preparation for the preliminary hearing.
3. The prosecution has no objection to this motion.

Respectfully submitted this 1st day of April, 2010


Brian M. Tanner
Attorney at Law

000036

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF DELIVERY

I hereby certify that on the 1st day of April, 2010, I delivered a copy of
the foregoing MOTION TO CONTINUE and ORDER TO CONTINUE, to the following:

Cassia County Prosecutor

☒ FAX


Brian M. Tanner

000037

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

2010 APR -2 A 9:39

IN THE MAGISTRATE COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO

Plaintiff,

v.

ABRAHAM CEJA VARGAS,

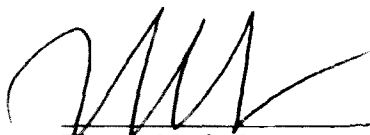
Defendant.

Case No. CR. 10-2088

ORDER TO CONTINUE PRELIMINARY
HEARING

The Court, having considered the Defendant's Motion to Continue and finding good cause therein, IT IS HEREBY ORDERED, that the Defendant's preliminary hearing be continued one rotation.

Dated this 2 day of April, 2010.



Honorable Judge

000038

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on April 2 20 10, I served a true and correct

copy of the foregoing document upon the parties named below in the manner noted:

Blaine Cannon
County Prosecutor
P.O. Box 7
Burley ID 83318

Brian M Tanner
516 Hansen Street E
Twin Falls ID 83301

- ☒ By depositing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.
- ☐ By hand delivering copies of the same to the office of the attorney(s) at the address above indicated.
- ☐ By telecopying copies of the same to said attorney at his/her telecopy number, and by then mailing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.
- ☒ By delivering a copy thereof to said attorney's mail file or basket at the Cassia County Courthouse in Burley, Idaho.

Larry Mickelsen
Clerk of the Court

C. Krigman
Deputy Clerk

000039

2010 APR -8 P 3:59

tw

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088*M

11 Plaintiff,

12 vs.

First
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____/

16 COMES NOW the State of Idaho and submits the following supplemental Response
17 to the Request for Discovery:

18 1. Documents: Enclosed please find the following documents which might be
19 offered as exhibits at trial:

- 20 (a) Case Involvement Report
21 (b) MCCJC Booking Report
22 (c) Dispatch Activity Summary Report - Call #507194
23 (d) Dispatch Activity Summary Report - Call #507188

24 2. Tangible Objects: The State may use any of the following objects as exhibits at
25 the trial and arrangements can be made with my office to inspect these objects:

- 26 (a) DVD Interview of Abraham Vargas dated 03-23-2010 (copy provided)
27 (b) 2 Photographs (colored copy provided)
28

STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1

H:\Shantel County Criminal Discovery Responses & Requests\Defendants\Supplemental Response Discovery-Vargas1.wpd

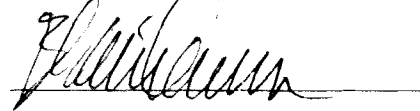
1
2 3. Witnesses. The State may call the following persons as witnesses at trial. To
3 prevent the unnecessary disclosure of personal identifying information, we are not providing you
4 with the telephone numbers or addresses of certain witnesses or victims. Please contact our office if
5 you need to contact a witness or victim.

6 (a) Daniel Ash, MCCJC

7 (b) Deann Taylor, CCSO

8 DATED this 7th day of April, 20 10.

9
10 BLAINE P. CANNON
Deputy Prosecuting Attorney

11 
12

13 **CERTIFICATE OF MAILING**

14 I hereby certify that on this 7th day of April, 20 10, I served a copy of
the within and foregoing State's Supplemental Discovery Response upon:

15 Brian Tanner
16 Attorney at Law
17 516 Hansen Street East
Twin Falls, Idaho 83301

18 X by depositing a copy thereof in the United State's mail, postage prepaid, in an
envelope addressed to said attorney at the foregoing address.

19 _____ by hand delivering copies of the same to the office of the attorney at the address above
20 indicated.

21 _____ by telecopying copies of the same to said attorney at his/her telecopy number of
22 _____, and then by mailing copies of the same in the United States Mail,
postage prepaid, at the Burley Post Office in Burley, Idaho.

23 _____ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
Courthouse in Burley, Idaho.

24 BLAINE P. CANNON
25 Deputy Prosecuting Attorney

26 
27

28 **STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 2**

HI-Shantel County Criminal Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas I wpd

000041

CR-2010-0002088
State of Idaho vs. Abraham Vargas

Hearing type: Preliminary

Hearing date: 4/9/2010

Time: 9:30 am

Judge: Rick L Bollar

Minutes Clerk: Connie Uriguen

Tape Number: mag

Defense Attorney: Brian Tanner

Prosecutor: Blaine Cannon

Interpreter: Alejandra

2010 APR -9 A 11:59

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY
COURT MINUTES

93200 Intro to Preliminary Hearing Grand Theft D Waives reading of complaint
93253 Preliminary matters - Tanner exclude witnesses PA speaks as to the witnesses--
witnesses leaves courtroom - Victim remains in courtroom
93342 PA calls Mark Merrill sworn in and takes stands
93421 PA D W #1
93626 Tanner object heresy PA argument on object J over rules object
93955 W #1 identifies Defendant in courtroom
94218 Tanner CX W #1
94319 PA RD W #1
94335 Tanner objects on foundation & heresy PA withdraws question
94353 W #1 steps down and is excused
94401 PA calls Noah Shiner sworn in and takes stand
94434 PA D W #2
94715 Tanner objects heresy J allows
94917 Tanner CX W #2
95100 Tanner objects heresy PA argument J allows
95121 W #2 steps down and leaves courtroom
95133 PA calls Daniel Renz sworn in and takes stand
95159 PA D W #3
95241 W #3 identifies the Defendant in courtroom
100433 Tanner CX W #3
101349 PA objects to fashion of questions Tanner argument on object J allows
101709 W #3 steps down and leaves the courtroom
101715 PA calls Kay Young sworn in and takes stand
101756 PA D W #4
102604 Tanner CX W #4
102721 PA mark picture as exhibit and shown to W #4 J Defendant's Exhibit A marked
and handed to W #4 to examine picture up close Tanner continues CX
103031 PA objects to further questioning on Exhibit A - Tanner argument to object - J
explains his ruling and allows questions on exhibit
103426 PA RD W #4 follow up questions on Defendant's Exhibit A
103528 W #4 steps down and remains in court room PA rest - Tanner has no testimony
103602 PA closing comments
104127 Tanner closing comments
104422 PA addl' closing comments

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104620 J comments and concerns about case motion to vacate and continue
104935 Tanner comments on motion to continue
105000 PA comments on motion bring addl' witness
105117 J Motion to Continue granted Continue 4-23-10 Tanner to check his calendar and
call court to reset hearing
105216 J hearing vacated and reset
105300 recess

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088*M

11 Plaintiff,

12 vs.

Second
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____/

16 COMES NOW the State of Idaho and submits the following supplemental Response
17 to the Request for Discovery:

18 1. Documents: Enclosed please find the following documents which might be
19 offered as exhibits at trial:

20 (a) Updated Incident Report 100300190 printed 04/12/2010

21 DATED this 12 day of April, 2010.

22
23
24 **BLAINE P. CANNON**
Deputy Prosecuting Attorney

25 
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STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1

H:\Shantel County Criminal\Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas2.wpd

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1
2
3 **CERTIFICATE OF MAILING**

4 I hereby certify that on this 12 day of April, 2010, I served a copy of
the within and foregoing State's Supplemental Discovery Response upon:

5 Brian Tanner
6 Attorney at Law
516 Hansen Street East
Twin Falls, Idaho 83301

7 ✓ by depositing a copy thereof in the United State's mail, postage prepaid, in an
8 envelope addressed to said attorney at the foregoing address.

9 by hand delivering copies of the same to the office of the attorney at the address above
indicated.

10 by telecopying copies of the same to said attorney at his/her telecopy number of
11 , and then by mailing copies of the same in the United States Mail,
postage prepaid, at the Burley Post Office in Burley, Idaho.

12 by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
13 Courthouse in Burley, Idaho.

14 BLAINE P. CANNON
15 Deputy Prosecuting Attorney

16 *Blaine Cannon*
17
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STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 2

H Shantel County Criminal Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas2.wpd

000045

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRISWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

2010 APR 16 A 10:57

CU

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088*M

11 Plaintiff,

12 vs.

Third
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.

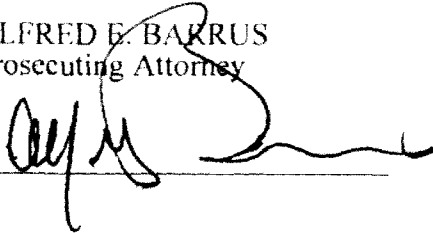
15
16 COMES NOW the State of Idaho and submits the following supplemental Response
17 to the Request for Discovery:

18 1. Witnesses. The State may call the following persons as witnesses at trial. To
19 prevent the unnecessary disclosure of personal identifying information, we are not providing you
20 with the telephone numbers or addresses of certain witnesses or victims. Please contact our office if
21 you need to contact a witness or victim.

22 (a) Manuel Santos, Santos Recycling

23 DATED this 15 day of April, 2010.

24 **ALFRED E. BARRUS**
25 Prosecuting Attorney

26 
27
28

STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1

H: Shantel County Criminal Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas3.wpd

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1
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3 **CERTIFICATE OF MAILING**

4 I hereby certify that on this 15th day of April, 2010, I served a copy of
5 the within and foregoing State's Supplemental Discovery Response upon:

6 Brian Tanner
7 Attorney at Law
8 516 Hansen Street East
9 Twin Falls, Idaho 83301

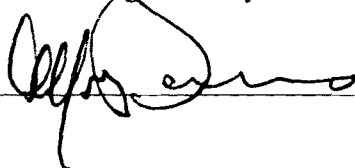
10 ☒ by depositing a copy thereof in the United State's mail, postage prepaid, in an
11 envelope addressed to said attorney at the foregoing address.

12 ☐ by hand delivering copies of the same to the office of the attorney at the address above
13 indicated.

14 ☐ by telecopying copies of the same to said attorney at his/her telecopy number of
15 _____, and then by mailing copies of the same in the United States Mail,
16 postage prepaid, at the Burley Post Office in Burley, Idaho.

17 ☐ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
18 Courthouse in Burley, Idaho.

19 ALFRED E. BARRUS
20 Prosecuting Attorney

21 
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STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 2

H: Shantel County Criminal Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas3.wpd

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

2010 APR 23 P 6:06

CR-2010-0002088

State of Idaho vs. Abraham Vargas

Hearing type: Preliminary - Continuation

Hearing date: 4/23/2010

Time: 9:52 am

Judge: Rick L. Bollar

Courtroom: Magistrate

Minutes Clerk: R. Carpenter

Defense Attorney: Brian Tanner

Prosecutor: Blaine Cannon

9:52:20 Judge introduction to case
9:53:45 Mr. Cannon calls Witness 5 (Manual Santos) W5 sworn in and takes stand
Mr. Cannon questions W5 re: situation
9:57:50 W5 identifies Defendant in courtroom
Mr. Cannon continues
9:59:23 Mr. Tanner questions W5
10:01:33 Mr. Tanner questions W5 re: Defendant's Exhibit A
Clerk marks Defendant's Exhibit B
10:06:30 Mr. Cannon objects - beyond scope
10:07:57 Mr. Tanner responds
10:10:43 Judge remarks - finds that property was not less than \$7000.00
Judge sustains objection
10:12:37 Mr. Tanner further comments
10:13:46 Mr. Tanner continues to question W5
10:13:55 Mr. Cannon objects - already resolved
10:14:24 Mr. Tanner responds
10:15:07 Judge allows questions
Mr. Tanner continues
10:16:26 Bailiff marks Defendant's Exhibit C
All parties discuss exhibit
10:24:29 Mr. Tanner continues to question W5
Defendant's Exhibit C admitted
Mr. Tanner further continues
10:30:40 Mr. Cannon questions W5 in aid of objection re: Exhibit C
10:33:05 Mr. Tanner continues
10:33:30 Mr. Cannon re-questions W5
10:37:59 Mr. Tanner re-questions W5
10:40:53 Mr. Cannon objects - unclear of question
Mr. Tanner re-phrases and continues
10:41:35 W5 steps down and is excused
Defendant's Exhibit C admitted
10:43:20 Mr. Cannon - closing argument
10:45:30 Mr. Tanner - closing argument
10:47:52 Mr. Cannon further remarks
10:50:19 Judge remarks - binds Defendant over to District Court
10:54 Recess

000048

Fifth Judicial District Court - Cassia County
Exhibit Summary
Case: CR-2010-0002088
State of Idaho vs. Abraham Vargas
Sorted by Exhibit Number

User: CARPENTE

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Photo's of Pipe/Well Casing	Admitted	Case File A		
		Assigned to:	Vargas, Abraham		
2	Receipt from Santos Recycling	Admitted	Case File B		
		Assigned to:	Vargas, Abraham		
3	List of Recycled Products / Customers	Admitted	Case File C		
		Assigned to:	Vargas, Abraham		

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

2010 APR 23 P 6:06

State of Idaho, Plaintiff)

-vs-)

Abraham Vargas
Defendant)

CASE NO. CR-20 10 - 2088 pc

**Notice of Hearing and Order
for Defendant to Appear**

Notice is given that this matter will come on for hearing as set forth below. Defendant is required to appear at all proceedings scheduled.

Hearing: ☒ Arraignment / Entry of Plea () Status Conference
() Motion: _____
() Change of Plea () Sentencing () Other: _____

Hearing Date and Time: May 18, 2010 at 900, A. M.

Trial: () Jury () Court () Probation Violation

Pre-trial Conference: _____, 20__ at _____, __.M.

Trial Date and Time: _____, 20__ at _____, __.M.

Date: 4/23, 2010.

District Judge: [Signature]

Certification by Defendant

By his/her signature below, Defendant certifies that he/she personally received a copy of this **Notice of Hearing and Order to Appear**.

Date: _____, 20__ Defendant's Signature: Abraham Vargas

Mailing Address: _____ City _____ State _____ Zip _____

Translated by: _____ (initials)

() Victim Notification sent

Notice of Hearing and Order to Appear

White-to Court

Rev, 1-10

Yellow-to Prosecutor

Green-to Defense Atty

Goldenrod- to Defendant

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2019 APR 26 AM: 03

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ORDER OF TRANSMITTAL TO THE DISTRICT COURT

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1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
Facsimile: 208.878.2924

2010/04/27 11:40:00

Handwritten signature

6 Attorneys for State of Idaho
7 10-46

8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,
11 Plaintiff,

Case No. CR-2010-2088*D

12 vs.

INFORMATION

13 **ABRAHAM CEJA VARGAS,**
14 Defendant.

15 _____ /
16 ALFRED E. BARRUS, Prosecuting Attorney in and for the County of Cassia, State
17 of Idaho, who, in the name and by the authority of said State, prosecutes in its behalf, in proper
18 person comes into said District Court in the County of Cassia, State of Idaho, on April 23, 2010,
19 and gives the Court to understand and be informed that the defendant is accused by this Information
20 of the crime of . Grand Theft by Possession, which said crime was committed as follows, to-wit:

21 **GRAND THEFT BY POSSESSION**

22 That the defendant, ABRAHAM CEJA VARGAS, on or about the 22nd day of
23 March, 2010, in the County of Cassia, State of Idaho did feloniously and knowingly possess stolen
24 property, to-wit: tubing shafts and piping, of a value in excess of One Thousand Dollars (\$1000.00),
25 the property of Oakley Idaho Crops, knowing the property to have been stolen by another, or under
26 circumstances as would reasonably induce him to believe that the property was stolen, and with the
27 intent to deprive the owner permanently of the use or benefit of the property. All in violation of
28 Idaho Code Sections 18-2403(4) and 18-2407(1), a felony.

INFORMATION - 1

H:\Shane\County Criminal Information\for District Court Defendants Info\Grand Theft - Ceja Vargas.spd

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1 All of which is contrary to the form, force and effect of the statute in such case made
2 and provided and against the peace and dignity of the State of Idaho.

3 ALFRED E. BARRUS
4 Prosecuting Attorney

5 By Brian Barrus
6 Deputy

7 The defendant is advised that discovery is available pursuant to Idaho Criminal Rule 16.

8 **DEMAND FOR NOTICE OF ALIBI DEFENSE**

9 Pursuant to Idaho Code, Section 19-519, the Prosecuting Attorney of Cassia County,
10 State of Idaho, or his Deputy, does hereby make written demand upon the defendant named in the
11 above Information that the defendant shall serve within ten (10) days, or at such different times as
12 the Court may direct, upon the Prosecuting Attorney of Cassia County, State of Idaho, at P.O. Box
13 7, Burley, Idaho 83318, a written notice of his intention to offer a defense of alibi. Such notice
14 shall state the specific place or places at which the defendant claims to have been at the time of the
15 alleged offense and the names and addresses of the witnesses upon whom he intends to rely to
16 establish such alibi.

14 ALFRED E. BARRUS
15 Prosecuting Attorney

16 By Brian Barrus
17 Deputy

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28 INFORMATION - 2

H: Shantel County Criminal Informations for District Court Defendants-Info-Grand Theft by Poss-Vargas.wpd

000053

1
2 CERTIFICATE OF MAILING

3 I hereby certify that on this 26 day of April, 2010, I served a copy of
4 the within and foregoing INFORMATION upon the attorney named below in the manner noted:

5 Brian Tanner
6 Attorney at Law
7 516 Hansen Street East
8 Twin Falls, Idaho 83301

9 / by depositing a copy thereof in the United State's mail, postage prepaid, in an envelope
10 addressed to said attorney at the foregoing address.

11 _____ by hand delivering copies of the same to the office of the attorney at the address above
12 indicated.

13 _____ by telecopying copies of the same to said attorney at his/her telecopy number of
14 _____, and then by mailing copies of the same in the United States Mail,
15 postage prepaid, at the Burley Post Office in Burley, Idaho.

16 _____ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
17 Courthouse in Burley, Idaho.

18 ALFRED E. BARRUS
19 Prosecuting Attorney

20 By: Blaine Barron
21 Deputy

22
23
24
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26
27
28 INFORMATION - 3

Blaine County Criminal Information for District Court Defendants Info-Grand Theft by Poss. Vehicle and

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DISTRICT COURT
CASSIA COUNTY ID

FILED _____

2010 MAY 18 AM 10:16

BOOYLAHAN

BY _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

State of Idaho vs. Abraham Vargas
CR-2010-0002088
Hearing type: Arraignment
Hearing date: 5/18/2010
Time: 9:27 am
Judge: Michael R Crabtree
Courtroom: District
Court reporter: Denise Schloder
Minutes Clerk: Tara Gunderson
Defense Attorney: Brian Tanner
Prosecutor: Blaine Cannon

The defendant is present with Counsel

Irene Soto is present to interpret.

Copies of the Information given to the defendant.

The defendant has had the opportunity to review the information with Counsel.

The Court verifies defendant's true and correct name.

The defendant states that his name is correct as stated by the Court.

Reading of the Information waived by the Defendant.

The defendant informed of the nature of the charges.

The defendant advised of the maximum penalties.

The defendant enters a plea of NOT GUILTY.

Pretrial Conference set for: July 13, 2010 at 9:30 a.m.

Jury Trial set for: July 28, 2010 at 9:00 a.m.

Brian Tanner addresses the Court re: rule 11.

The Court addresses Counsel.

Hearing concludes: 9:31 a.m.

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FILED _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

MAY 18 AM 10:16

DEMYCANIAN

State of Idaho, Plaintiff)

-VS-)

Abraham Vargas
Defendant)

CASE NO. CR-2010-0088

**Notice of Hearing and Order
for Defendant to Appear**

Notice is given that this matter will come on for hearing as set forth below. Defendant is required to appear at all proceedings scheduled.

Hearing: () Arraignment / Entry of Plea () Status Conference
() Motion: _____
() Change of Plea () Sentencing () Other: _____

Hearing Date and Time: _____, 20__ at _____, __ M.

Trial: ☒ **Jury** () **Court** () **Probation Violation**

Pre-trial Conference: July 13, 2010 at 930 A.M.

Trial Date and Time: July 28, 2010 at 900 A.M.

Date: 5/18, 2010.

District Judge: [Signature]

Certification by Defendant

By his/her signature below, Defendant certifies that he/she personally received a copy of this **Notice of Hearing and Order to Appear**.

Date: 5/18, 2010 Defendant's Signature: Abraham Vargas

Mailing Address: _____ City _____ State _____ Zip _____

Translated by: _____ (initials)

() Victim Notification sent

Notice of Hearing and Order to Appear

White-to Court

Rev. 1-10

Yellow-to Prosecutor

Green-to Defense Atty

Goldenrod- to Defendant

000056

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 MAY 18 PM 1:04

DEE YEAMAN

BY

DEE YEAMAN

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

State of Idaho,

Plaintiff,

vs.

ABRAHAM VARGAS,

1800 Almo Avenue

Burley, ID 83318

DOB: [REDACTED]

Defendant.

CASE NO. CR-2010-0002088 D


Order Regarding Jury Selection Procedure-Criminal Case
(Struck Jury)

The following procedure will be used for selection of the jury in this case:

1. **Random Selection of Venire Panel:** The qualified jurors for the present term have each been randomly assigned a juror number by a computer software program. From the number of jurors specified by the court to appear as the venire panel for selection in this case, the computer software program has randomly assigned a specific seat number to each juror.

2. **Seating of Jury Venire Panel:** The jurors are seated in numerical order according to the seat number assigned to each. The jurors are each provided a card with their assigned seat number. The card will be referred to

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during the selection process for purposes of taking roll, for confirmation that each juror is seated in the correct seat and for purposes of identification during voir dire examination.

3. **Struck Panel:** The struck panel consists of the following number of jurors present, beginning with the lowest seat number present and continuing in successive numerical order, until the required number of jurors for the struck panel are identified. All jurors remain seated in numerical order throughout the selection process. The struck panel consists of the following:

- a. The number of jurors required for this trial (12); plus
- b. The number of peremptory challenges authorized to each party by the criminal rules; plus
- c. The number of alternate jurors determined by the court; plus
- d. The number of additional peremptory challenges allowed to each party based on the number of alternate jurors determined by the court.

4. **Opening Statements During Selection:** In a criminal case, the court generally does not utilize brief opening statements by counsel during selection of the jury. ICR 24(a). If opening statements are permitted, the statements will be brief, non-argumentative and not a substitute for formal opening argument after the trial jury is selected.

5. **Examination of Jurors:**
- a. Examination of the prospective jurors will be directed to the struck panel, as determined above, plus such additional jurors as the court determines. The additional jurors will be those in the seat numbers immediately subsequent to the last juror in the struck panel, in numerical order. ICR 24(c), (d)

and (e).

b. The court conducts the initial examination of prospective jurors regarding the grounds for excuse from service and disqualification for cause. The court may excuse the remainder of the juror array present, subject to recall. If recalled, those jurors will occupy the same assigned seat number. Any such jurors recalled will be examined by the court and counsel regarding excuse from service and disqualification for cause and be subject to any remaining rounds of peremptory challenges, in the numerical order in which they are seated. During the court's examination, the court will determine, on its own motion, whether or not to excuse a juror.

c. Throughout the examination process, the seat of any juror excused or struck will remain unoccupied thereafter. The content of the struck panel will be expanded to include the next higher-numbered seat occupied by a juror from the additional jurors designated court for examination.

6. **Voir Dire Examination by Counsel:** Counsel will each be allotted a specific amount of time in which to conduct voir dire examination of the struck panel plus such additional jurors as the court examined.

7. **Examination of Juror Outside Presence of Venire Panel:** A juror may request to answer questions outside the presence of the other jurors in the venire panel. If the court is satisfied that this is necessary to avoid improper information being presented that might influence the venire panel, further examination of such juror(s) will be conducted outside the presence of the other potential jurors. This examination will be conducted on the record, in the presence of the defendant, counsel for each party, the deputy clerk of the court and such other

court personnel as the court determines. The court may excuse such juror(s) following examination or have the juror(s) return to their assigned seat in the courtroom for further examination.

8. Challenges for cause: At the conclusion of voir dire examination, the court will inquire of counsel whether they pass the jury for cause. If either party intends to challenge a juror for cause, the matter will be taken up outside the presence of the jury. Challenges for cause will be conducted on the record, in the presence of the defendant, counsel for each party, the deputy clerk of the court and such other court personnel as the court determines. The court will then conduct such further hearing and take such further evidence as may be required. ICR 24(b). The court will make a determination on any challenge(s) for cause and will excuse those jurors for whom cause has been shown. **9.**

Replacement of Excused and Challenged Jurors in Struck Panel: Any juror who is struck for cause will be replaced in the struck panel by the next higher numbered seated juror. Jurors will not change seats, but will remain in their assigned seat number, in numerical order.

10. Peremptory Challenges: Peremptory challenges will exercised in the courtroom in the following manner:

a. The parties will mark their peremptory challenges on a master list prepared and provided by the court, identifying the juror by name, juror number and seat number.

b. The parties will exercise peremptory challenges in alternating order. The State will go first each round of challenges.

c. A pass of peremptory challenge will be indicated by marking

“pass” on the line for the juror’s name in the particular round in which the parties are challenging. A pass constitutes use of the peremptory challenge from the total allotted.

d. The total number of peremptory challenges will be exercised as to the struck panel, as composed pursuant to paragraph 3, above. Peremptory challenges are not conducted separately for alternate jurors, as alternate jurors are required to sit during the entire trial through conclusion of closing arguments, and are then selected and removed by lot. ICR 24(1) and (2).

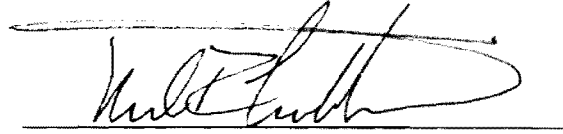
e. In the event both parties pass in the same round, the peremptory challenges are concluded.

11. **Trial Jury:** The trial jury will be made up of those jurors seated in the struck panel who remain after the exercise of challenges for cause and peremptory challenges, beginning with the lowest-numbered seated juror and continuing through the subsequent next higher-numbered seated jurors that remain, until the required number [12 plus alternates(s)] are seated in the jury box.

12. **Written juror questionnaires:** Motions for use of written juror questionnaires must be filed and hearing conducted no later than sixty (60) days prior to trial in order to provide for timely submission, receipt and review of such questionnaires prior to trial, should the court grant the motion. The specific questions proposed shall accompany or be included in the motion. The parties are required to meet and discuss the motion prior to hearing, in order to determine if stipulation is possible on any of the questions, thereby narrowing the issues for consideration at hearing.

13. **Objections to panel:** Challenges and objections to the panel are governed by I.C. §§ 19-2004, 19-2006 and 19-2012, and must be made in writing, must state the grounds for objection and must be presented to the court before the jurors are sworn.

DATED this 18 day of May, 2010.



Michael R. Crabtree, District Judge

CERTIFICATE OF MAILING

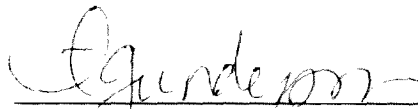
I hereby certify that on this 18 day of May, 2010, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon
Deputy County Prosecutor
P.O. Box 7
Burley, ID 83318

✓ Courthouse Box

2. Brian M Tanner
Attorney at Law
516 Hansen Street East
Twin Falls, ID 83301

✓ U.S. Mail



Tara Gunderson
Deputy Clerk

disqualified on this action: Judges Bevan, Brody, Butler, St. Clair, Stoker, Elgee, Higer, Hurlbutt, Meehl, Wildman and Wood.

3). Appearance of Defendant: Pursuant to Rule 43, Idaho Criminal Rules, the defendant is required to be personally present in court at the following proceedings: arraignment; status and pre-trial conferences; hearings on all motions and arguments on questions of law (including but not limited to motions regarding bail, motions for suppression of evidence, motions in limine regarding evidence at trial); at every stage of trial including impaneling of the jury and return of the verdict. Failure of the defendant to attend court as required may result in the forfeiture of bond and the issuance of a bench warrant for the arrest of defendant.

4). Motions: All motions based on ICR 12, and any other motions, including motions in limine and motions to dismiss, must be filed and scheduled to be heard no later than thirty (30) days prior to the pre-trial conference, unless good cause is shown to depart from this timeframe. All motions must be accompanied by such supporting affidavits as may be required, together with a mandatory memorandum of law that sets forth the specific issue to be addressed in the motion and sets forth the authority in support of the motion. The Clerk will not schedule the motion for hearing until both the motion and the accompanying memorandum of law are filed. Pursuant to ICR 45(c) and (d), hearings on motions may not be scheduled sooner than seven days following service together with three days for service by mail, and upon objection shall be vacated if not timely scheduled.

5). Discovery Cut-off: All discovery pursuant to ICR 15 and 16, shall be completed no later than fourteen (14) days prior to the pre-trial conference. Additionally, counsel for the parties shall have disclosed to each other, in writing, no later than fourteen (14) days prior to the pre-trial conference, the names and

addresses of all witnesses the party intends to call at trial. This order does not apply to the State's rebuttal witnesses.

6). Further Evidence disclosure requirements: In the event either party intends to introduce evidence at trial pursuant to Rules 404, 405, 406, 410, 412, 608 and 609, such evidence must be disclosed by written notification served on the opposing party no later than 30 days prior to trial, unless good cause is shown to depart from this timeframe.

7). Sanctions: Failure to comply with this order will be grounds for imposition of sanctions that may include the following: costs incurred for subpoenas and witness travel expenses; exclusion of witnesses or evidence; jury costs; attorneys fees.

8). Pleas of Guilty: The following procedures will apply before the court will accept a plea:

a. The defendant is required to complete, sign and file a Guilty Plea Advisory form document;

b. If there is a plea agreement, the agreement will be written and signed by counsel for each party and by the defendant, and filed with the court;

c. If the Defendant wishes to enter a plea of guilty, written notification of the same is to be filed with the court, signed by the defendant. Trial will not be vacated unless the written and signed notification of intent to plead guilty is filed prior to the trial date;

d. A specific time will be scheduled by the Clerk for the change of plea hearing. Changes of plea will not be conducted during arraignment or at pre-trial conference.

9). Continuances: A continuance of trial will not be granted by the court

except upon written stipulation stating the good cause for vacating trial, signed by counsel for each party and by the defendant. If the continuance will result in delay of trial beyond the time frame for conducting speedy trial, the continuance will not be granted unless the defendant signs and files a written waiver of his/her right to speedy trial which acknowledges his right and which expressly waives the right.

10). Mediation: In the event the parties wish to explore mediation, they shall file a request for mediation, signed by counsel for each party and by the defendant. If the parties are unable to mutually agree upon a mediator, the court will appoint one upon being advised of the necessity to do so.

DATED this 18 day of May, 2010.



MICHAEL R. CRABTREE
District Judge

CERTIFICATE OF MAILING

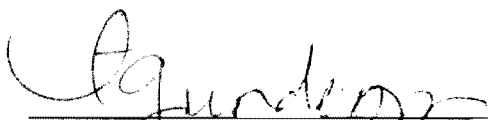
I hereby certify that on this 18 day of May, 2010, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon
Deputy County Prosecutor
P.O. Box 7
Burley, ID 83318

✓ Courthouse Box

2. Brian M Tanner
Attorney at Law
516 Hansen Street East
Twin Falls, ID 83301

✓ U.S. Mail



Tara Gurderson
Deputy Clerk

FILED

2010 MAY 19 AM 11:52

DEPUTY CLERK

BY DEPUTY

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
Cassia County, Idaho
1918 Overland Avenue
4 Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

6 Attorneys for State of Idaho
7 10-46

8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088 D

11 Plaintiff,

12 vs.

REQUEST FOR DISCOVERY

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____/

16 TO: BRIAN TANNER:

17 PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho
18 Criminal Rules, requests delivery and inspection of the following information, evidence and
19 materials with respect to the defendant.

20 1. **Documents and tangible objects** – including, but not limited to, books, papers,
21 documents, photographs, tangible objects or copies or portions thereof, which are within the
22 possession, custody or control of the defendant, and which the defendant intends to introduce in
23 evidence at the trial.

24 2. **Reports of examinations and tests** – including, but not limited to, any results or
25 reports of physical or mental examinations and of scientific tests or experiments, made in
26 connection with the particular case, or copies thereof, within the possession or control of the
27 defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared

28 REQUEST FOR DISCOVERY -1

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000069

1 by a witness whom the defendant intends to call at the trial when the results or reports relate to
2 testimony of the witness.

3 **3. Defense Witnesses** – A written list of the names and addresses of all persons
4 having knowledge of relevant facts who may be called by the attorney for the defendant as
5 witnesses at the trial, together with any record of prior felony convictions of any such persons which
6 is within the knowledge of the attorney for the defendant. We also request that you furnish us the
7 statements made by your witnesses or your prospective witnesses or their
8 involved in the investigatory process of the case which is in possession, custody or control of your
9 office.

10 **4. Expert Witnesses** – A written list of the names and addresses of all expert
11 witnesses who may be called by the attorney for the defendant at the trial. The State hereby requests
12 pursuant to Idaho Criminal Rule 16(c)(4), that the Defendant provide the State with a written
13 summary or report of any testimony that the defense intends to introduce pursuant to Idaho Rules of
14 Evidence 702, 703 or 705 at trial or hearing. The summary provided must describe the witness's
15 opinions, the facts and data for those opinions and the witness's qualifications.

16 **5. Alibi** – Any alibi that the defendant may have that your office intends to use at
17 trial.

18 DATED this 18th day of May, 2010.

19 ALFRED E. BARRUS
20 Prosecuting Attorney

21 By [Signature]
22 Deputy

23
24
25
26
27
28 **REQUEST FOR DISCOVERY -2**

H Shantel County Criminal Discovery Responses & Requests Request Discovery-OKM wpd

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CERTIFICATE OF MAILING

I hereby certify that on the 18 day of May, 2010, I served a true and correct copy of the within and foregoing Request for Discovery upon the attorney named below in the manner noted:

Brian Tanner
Attorney at Law
516 Hansen St. E
Twin Falls, Idaho 83301

☒ by depositing a copy thereof in the United State's mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.

☐ by hand delivering copies of the same to the office of the attorney at the address above indicated.

☐ by telecopying copies of the same to said attorney at his/her telecopy number of _____, and then by mailing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.

☐ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County Courthouse in Burley, Idaho.

ALFRED E. BARRUS
Prosecuting Attorney

By


Deputy

REQUEST FOR DISCOVERY -3

H Shantel County Criminal Discovery Responses & Requests Request Discovery-OKM wpd

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**DISTRICT COURT
CASSIA COUNTY ID**

FILED _____

2010 JUN -4 PM 12:18

DEE YEAMAN

BY CS
DEPUTY

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

IN THE MAGISTRATE COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO

Plaintiff,

v.

ABRAHAM CEJA VARGAS,

Defendant.

Case No. CR. 10-2088

MOTION FOR JURY INSTRUCTIONS

COMES NOW, the above named Defendant, Abraham Ceja Vargas, by and through his attorney or record, Brian Tanner, and hereby moves this court for an order allowing jury instructions which are discussed below.

The Defendant seeks to clarify that the State has the burden of proving market value in excess of \$1,000. The proposed jury instruction is attached as Exhibit A.

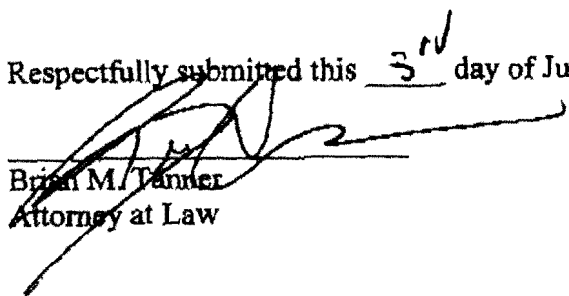
The Defendant seeks to clarify to the jury the method in which value is ascertained. The proposed jury instruction is attached as Exhibit B.

In reference to Exhibit B, the Idaho Appeals Court in *State v. Johnson*, 35635, p. 2 (Ct. App. 2010) held that "if the market value cannot be established, value can be shown by any number of measures other than just salvage value including purchase price, replacement cost, and the property's general use and purpose." See also, *State v. Hughes*, 130 Idaho 698, 703, 946 P.2d 1338, 1343 (Ct. App. 1997).

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Based on the following, the Defendant requests the Court consider and include the proposed jury instructions.

Respectfully submitted this 5th day of June, 2010



Brian M. Tanner
Attorney at Law

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EXHIBIT A

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INSTRUCTION NO. _____

The State has the burden of proving beyond a reasonable doubt
value above \$1,000.

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EXHIBIT B

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INSTRUCTION NO. _____

The term "value" as used in these instructions means as follows:

[The market value of the property at the time and place of the crime,] [or] [if the market value cannot be satisfactorily ascertained, value can be shown by any number of measures including salvage value, replacement cost, purchase price, and the property's general use and purpose.]

000077

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF DELIVERY

I hereby certify that on the ^m4 day of June, 2010, I delivered a copy of
the foregoing MOTION FOR JURY INSTRUCTIONS to the following:

Cassia County Prosecutor

[4] FAX


Brian M. Tanner

000078

FILED.....

2010 JUN 25 PM 3: 56

DEE YEANIAN

BY  DEPUTY

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
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Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs

ABRAHAM VARGAS.

Defendant.

Case No CR 10-2088D

MOTION TO SUPPRESS

COMES NOW, the Defendant, by and through counsel of record, hereby moves this Court to suppress any and all confessions obtained by Detective Dan Renz at the Cassia County Sheriff's Office regarding knowledge that the pipes in question were stolen. This motion is based on the Memorandum in Support of Motion to Suppress attached herewith.

Respectfully Submitted This 29th of June, 2010.


Brian M. Tanner

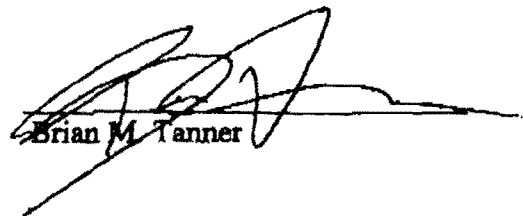
BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF DELIVERY

I hereby certify that on the 25th day of June, 2010, I delivered a copy of the
foregoing MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF MOTION TO
SUPPRESS, AFFIDAVIT OF BRIAN M. TANNER, to the following:

Cassia County Prosecutor

☒ FAX


Brian M. Tanner

000080

FILED _____

2010 JUN 25 PM 3:57

DEE YEAMAN

BY [Signature]
DEPUTY

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs

ABRAHAM VARGAS.

Defendant.

Case No CR 10-2088D

**MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

COMES NOW, the above named Defendant by and through his attorney Brian Tanner,
and hereby offers the following MEMORANDUM IN SUPPORT OF MOTION TO
SUPPRESS.

The Defendant seeks to suppress statements he made to the police officer. In particular
he wishes to suppress any statements he made which suggest he was suspicious the pipe might
have been stolen.

The issue is whether these statements were given voluntarily to the police officer.

FACTS

The following colloquy takes place between the police officer and the defendant at the
police station as recorded by video:

The police officer first asks general questions regarding whether or not the defendant participated in collecting the pipes. The defendant denies collecting the pipes but does admit that he loaned a friend his truck and his friend picked up the pipes and drove to the defendant's house. The defendant assisted his friend, identified as Miguel Magana, transport the pipes to Santos Recycling in Burley, Idaho. The defendant states that he did not ask his friend whether or not the pipes were stolen and did not know the pipes were stolen. After 13 minutes, the police officer states, "you knew that the pipes had been robbed." The defendant then denies making this statement and says that he did not know the pipes were stolen and that to rob is a bad thing - suggesting that if he knew the pipes were stolen, he would not have transported them. The police officer, at 13:40 in the tape again states, "you didn't know the pipes were stolen?" The defendant states "no." At 14:02 the officer states, "you had suspicions right?" The officer then again states a few seconds later, "you didn't know?" The defendant then states, "yes, I know that robbing is bad." Despite receiving an answer four times to this question, the police officer continues to persist and states at 16:07 in the tape, "you weren't certain the pipes were stolen right?" and then states again, "you didn't know right?" The defendant then admits that his friend did collect a lot of pipe and it's possible that the pipes could have been stolen. The police officer then enthusiastically agrees with the defendant and states that it really doesn't make any sense to have that much pipe if the defendant's friend is not working. The defendant then acknowledges this.

The police officer persists with the exact same line of questioning and again states at 16:17, "you weren't certain the pipes were stolen right?" "You didn't know right?" Further in the tape at 18:28 the defendant states again, "I didn't know." "If I would have known, I would not have transported the pipe." The police officer then states, "I don't think you are guilty at all."

"What I am telling you is that the story you are telling me makes sense in part and in part it doesn't make sense." The officer continues at 20:10, "perhaps you didn't know. I'm not saying that you knew the pipes were stolen ,but you were with him (Miguel Migana) and helped him carry the metal-no?"

The officer finally states after 21:15 of questing that "we are going to charge you either way....what I am saying is that it is always better to be honest. I believe that you want to be honest, but you were afraid of having problems. What I am telling you is you're going to have charges and problems either way, so it's better that you tell me everything because I know there is more to tell and I know you went with them." At 27 minutes the officer states, "I know you went with Miguel to pick up the metal...you're going to maintain this story?" The defendant then agrees that he went with Miguel to drop off the metal pipes.

The police officer than leaves the defendant in the interrogation room for three to four minutes and then returns stating, "why did you lie to me....that's because you had suspicions the pipe was stolen right?" The defendant acknowledges that he had suspicions and the conversation ends.

LEGAL ARGUMENT

The fifth amendment to the United States Constitution allows for the right against self incrimination. Statements to the police are not admissible if the confessions are not voluntary. Voluntariness in the constitutional sense must be shown by the totality of the circumstances surrounding police efforts to obtain incriminating statements. *State v. Kysar*, 114 Idaho 457, 458, 757 P.2d 720 (Idaho App. 1988). A statement is voluntary if it is the product of a free will. *Id.*, quoting *State v. Powers*, 96 Idaho 833, 537 P.2d 1369 (1975). Under this standard, it must be determined that the statement was not extracted "by any sort of threats or violence, nor

obtained by any direct or implied promises...." *Id.*, quoting *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897).

In *State v. Kysar*, the following dialogue took place:

[Detective]: Why don't you start from the beginning and tell me what happened?

Kysar: What can you do for me?

[Detective] Well, it depends on what you tell me. You know, like I say, it's always best to cooperate and tell the truth. And the judge looks at that and the prosecutor looks at that and say, hey, you know, this guy's got a good attitude. He might be worth rehabilitating. A guy that sits back and says "up yours" and "screw you guys" and "I don't want to talk to you or nothin' " you know, they figure, hey, this guy's a lost cause, you know. So you kind of see where we're at and where the judge is at, so he can....

Kysar: Will I be out of jail by the time my baby is born?

[Detective] When will your baby be born?

Kysar: Well, you know, say five months.

[Detective] Five months? I'd say that's a pretty safe bet.

The detective then agreed to inform the prosecutor of the defendant's cooperative nature.

The Idaho Appeals Court held statements from the detective that it is a "safe bet" that the defendant would be released in five months is enough to defeat the voluntariness of the confession. "We think the detective's statement amounted to an implied promise that if Kysar cooperated, his incarceration for the offense would be completed before the child was born. Furthermore, regardless of which interpretation were adopted, the detective making the assurance did not have the authority to fulfill it--and Kysar was not apprised of that fact." *Id.* at 459. Therefore, based on the totality of the circumstances surrounding the confession, the Court concluded that the detectives representations, taken together, were sufficient to undermine Kysar's free will. Therefore his confession was not voluntary and correctly suppressed. *Id.* at 459.

The current case is very similar to *State v. Kysar*. First, the voluntariness of the confession, under a totality of the circumstances standard must be questioned. The police officer asked the defendant the same question nine separate times. The first four times the defendant states he did not know the pipes had been taken. Given further interrogation on the same exact question, the defendant finally states that the pipes could have been taken or there is a possibility that the pipes were taken. The officer, in response, states, "I don't think you are guilty at all." Nonetheless, the officer continues the same line of questioning and tells the defendant, "we are going to charge you either way (despite the fact that the defendant is not guilty)....what I am saying is that it is always better to be honest. I believe that you want to be honest, but you were afraid of having problems. What I am telling you is you're going to have charges and problems either way, so it's better that you tell me everything because I know there is more to tell and I know you went with them."

This case is similar to the *Kysar* case in that the officer's statement amounted to an "implied promise" that if Mr. Vargas cooperated, it would be better for him down the road. In reality, the confession provided a basis upon which the officer could obtain a conviction and support the charges of felony grand theft by possession. It is clear the officer knew from the very beginning what he wanted. Making promises about the benefit of a confession is simply not a truthful or accurate statement by the officer because the confession hurts the defendant instead of helps him. In fact, a confession proves the state's case when it would be extremely difficult to prove otherwise. Idaho Code section 18-2403(4) requires that the defendant possess property, "knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen." Clearly the officer asked this question, not to make things "better" for the defendant, but to support a conviction.

The officer's statement that charges would be brought against the defendant no matter what he said is likewise, not accurate, because the officer does not control what charges are brought. This is the prerogative of the prosecutor. The statement that things would be better for the defendant if he openly confessed is also misleading because the officer does not have the authority to amend or change the charges. In reality, the officer's promise was a technique to undermine the clear resistance of the defendant and obtain a slam dunk confession.

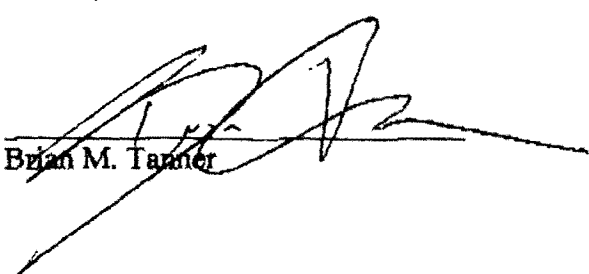
The statement from the officer that if the defendant were "honest" then things would go better for him, puts the defendant in an extremely awkward and dangerous position. If the defendant continues to state that he did not have knowledge, then he is perceived as not being honest, and surely things will be worse for him - according to the police officer. If the defendant however, states that he does have knowledge, then he essentially confesses to the crime. The defendant should not be subjected to this kind of Hobson's choice. The issue is even more problematic because if the defendant gives an "honest" answer, then he is essentially saying he previously lied, and is therefore not honest and subject to greater punishment. It's not possible to give a statement which is not incriminating in this context.

Based on the foregoing, the confession from the defendant that he suspected the pipes might have been stolen should be suppressed as the confession is not voluntary and is the direct consequence of untruthful representations from the police officer.

CONCLUSION

For the following reasons, the Defendant respectfully requests that his statements regarding knowledge the property was stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, should be suppressed.

1-
Respectfully Submitted this 25 day of June, 2010.



Brian M. Tanner

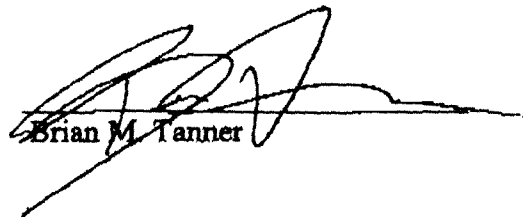
BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF DELIVERY

I hereby certify that on the 25th day of June, 2010, I delivered a copy of the foregoing MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS, AFFIDAVIT OF BRIAN M. TANNER, to the following:

Cassia County Prosecutor

☒ FAX



Brian M. Tanner

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 JUN 25 PM 3:57

DEE YEAMAN

BY 
DEPUTY

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs

ABRAHAM VARGAS.

Defendant.

Case No CR 10-2088D

AFFIDAVIT OF BRIAN M. TANNER


Brian M. Tanner, being first duly sworn upon oath, deposes and says:

1. I am the attorney of record for the Defendant, Abraham Vargas.
2. I am cognizant of the Court's Pre-trial Scheduling Order which requires all motions based on ICR 12, be filed and heard no later than 30 days prior to the pre-trial conference, unless good cause is shown to depart from this time frame.
3. On May 19, 2010, I wrote an email to the prosecutor informing him of my intent to file a motion to suppress. In response, the prosecutor stated that if a motion to suppress was filed, he would withdraw his probation recommendation.
4. Accordingly, I attempted to pursue other defenses prior to filing a motion to suppress. I filed proposed jury instructions on June 3, 2010 and also filed an additional discovery request on June 3, 2010 relevant to discovery of the value of the pipe. I did not file a motion to suppress on this date because I wanted to see what kind of a case I had by obtaining more information about the value of the property before I surrendered the probation recommendation. Further attempts were made after this date to obtain more information about the pipes.

000089


5. I have not received a response to my request for discovery relevant to the value of the pipe and the deadline for ICR 12 motions has passed. In order to preserve the suppression motion, I am filing it now.

Further your affiant sayeth naught,


Brian M. Tanner

SUBSCRIBED AND SWORN before me this 25th day of June, 2010.




NOTARY PUBLIC for Idaho
Residing at: Twins Falls
My Commission Expires: 4/2015

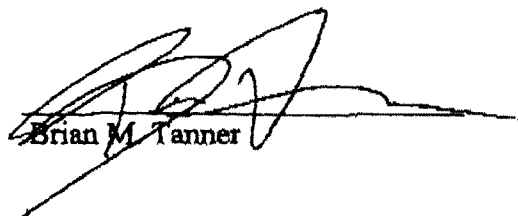
BRIAN M. TANNER
Attorney at Law
316 Hansen St. E.
Twin Falls, ID. 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF DELIVERY

I hereby certify that on the 25th day of June, 2010, I delivered a copy of the foregoing MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS, AFFIDAVIT OF BRIAN M. TANNER, to the following:

Cassia County Prosecutor

[☒] FAX

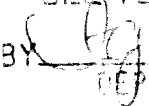

Brian M. Tanner

000091

FILED

2010 JUN 28 PM 3:40

DEE YEAMAN

BY  DEPUTY

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
Facsimile: 208.878.2924

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-2088 D

11 Plaintiff,

12 vs.

Fourth
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____/

16 COMES NOW the State of Idaho and submits the following supplemental Response
17 to the Request for Discovery:

18 1. Documents: Enclosed please find the following documents which might be
19 offered as exhibits at trial:

20 (a) Statement by G.J. Verti-Line Pumps dated 06-14-2010

21 2. Witnesses. The State may call the following persons as witnesses at trial. To
22 prevent the unnecessary disclosure of personal identifying information, we are not providing you
23 with the telephone numbers or addresses of certain witnesses or victims. Please contact our office if
24 you need to contact a witness or victim.

25 (a) Eric Staley

26 3. Expert Witness. The State has disclosed its intent to call Eric Staley as a witness
27 in this case. Pursuant to Idaho Criminal Rule 16(b)(7), the State discloses that it intends to rely on

28 STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1

H:\Shantel\County Criminal\Discovery Responses & Requests Defendants\Supplemental Response Discovery-Vargas4.wpd

000092

1
2 Eric Staley as an expert witness. Mr. Staley will offer his opinion regarding the market value or
3 replacement value of the well casing that was sold as scrap at Santos Recycling, and that was stolen
4 from the farm managed by Kaye Young – a witness in this case. Mr. Staley will offer his opinion
5 that the stolen well casing has a market or replacement value in excess of \$1,000.00. His opinion is
6 based on the evidence in this case and his experience being employed by G.J. Pump in Twin Falls,
7 Idaho.

8 The State hereby requests pursuant to Idaho Criminal Rule 16(c)(4), that the
9 Defendant provide the State with a written summary or report of any testimony that the defense
10 intends to introduce pursuant to Idaho Rules of Evidence 702, 703 or 705 at trial or hearing.

11
12 DATED this 27th day of June, 2010.

13
14
15 BLAINE P. CANNON
16 Deputy Prosecuting Attorney

17 

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28 STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 2

H: Shantel County Criminal Discovery Responses & Requests Defendants Supplemental Response Discovery-Vargas4 wpd

000093

1
2 **CERTIFICATE OF MAILING**

3 I hereby certify that on this 24th day of June, 20 10, I served a copy of
4 the within and foregoing State's Supplemental Discovery Response upon:

5 Brian Tanner
6 Attorney at Law
516 Hansen Street East
Twin Falls, Idaho 83301

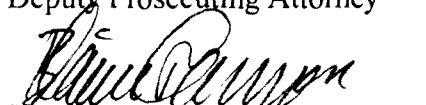
7 X by depositing a copy thereof in the United State's mail, postage prepaid, in an
8 envelope addressed to said attorney at the foregoing address.

9 _____ by hand delivering copies of the same to the office of the attorney at the address above
10 indicated.

11 _____ by telecopying copies of the same to said attorney at his/her telecopy number of
12 _____, and then by mailing copies of the same in the United States Mail,
13 postage prepaid, at the Burley Post Office in Burley, Idaho.

14 _____ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
15 Courthouse in Burley, Idaho.

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BLAINE P. CANNON
Deputy Prosecuting Attorney



1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
5 Facsimile: 208.878.2924

6 Attorneys for State of Idaho
10-46

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2010-02088 D

11 Plaintiff,

12 vs.

Fifth
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____/

16 COMES NOW the State of Idaho and submits the following supplemental Response
17 to the Request for Discovery:

18 1. Documents: Enclosed please find the following documents which might be
19 offered as exhibits at trial:

- 20 (a) Answers to Questions handwritten by previously disclosed witness (Kaye Young)
21 (b) Layne & Bowler Estimate Sheet dated 04-08-1953
22 (c) Layne & Bowler Invoice dated 3-31-1960
23 (d) Verti-Line Aurora Pumps Invoice dated 4-21-1976
24 (e) Aurora Pumps Invoice dated 06-29-1979
25 (f) G.J. Verti-Line Pumps Invoice dated 06-26-1992
26 (g) G.J. Verti-Line Pumps Invoice dated 03-24-2010
27 (h) Updated Statement by G.J. Verti-Line Pumps dated 07-07-2010

28 **STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1**

H. Shantel County Criminal Discovery Responses & Requests: Defendants Supplemental Response Discovery-Vargas5 wpd

000095

1
2
3 DATED this 12 day of July, 2010.

4
5 BLAINE P. CANNON
Deputy Prosecuting Attorney

6 Blaine Cannon
7

8
9 **CERTIFICATE OF MAILING**

10 I hereby certify that on this 12 day of July, 2010, I served a copy of
11 the within and foregoing State's Supplemental Discovery Response upon:

12 Brian Tanner
13 Attorney at Law
14 516 Hansen Street East
15 Twin Falls, Idaho 83301

16 ☒ by depositing a copy thereof in the United State's mail, postage prepaid, in an
17 envelope addressed to said attorney at the foregoing address.

18 ☐ by hand delivering copies of the same to the office of the attorney at the address above
19 indicated.

20 ☐ by telecopying copies of the same to said attorney at his/her telecopy number of
21 _____, and then by mailing copies of the same in the United States Mail,
22 postage prepaid, at the Burley Post Office in Burley, Idaho.

23 ☐ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
24 Courthouse in Burley, Idaho.

25
26 BLAINE P. CANNON
Deputy Prosecuting Attorney

27 Blaine Cannon
28

STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 2

H:\Shantel\County Criminal\Discovery Responses & Requests\Defendants\Supplemental Response Discovery-Vargas5 wpd

000096

FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

2010 JUL 13 AM 10:53

State of Idaho, Plaintiff

-vs-

Abraham Vargas
Defendant

CASE NO. CR-20 10-2088

**Notice of Hearing and Order
for Defendant to Appear**

Notice is given that this matter will come on for hearing as set forth below. Defendant is required to appear at all proceedings scheduled.

Hearing:

- () Arraignment / Entry of Plea () Status Conference
(X) Motion: to suppress / Jury Instructions
() Change of Plea () Sentencing (X) Other: PTC

Hearing Date and Time: 7/21, 2010 at 2:00, P.M.

Trial: () Jury () Court () Probation Violation

Pre-trial Conference: _____, 20__ at _____, __M.

Trial Date and Time: _____, 20__ at _____, __M.

Date: 7/13, 2010.

District Judge: [Signature]

Certification by Defendant

By his/her signature below, Defendant certifies that he/she personally received a copy of this **Notice of Hearing and Order to Appear**.

Date: 07/13, 2010 Defendant's Signature: Abraham Vargas

Mailing Address: _____ City _____ State _____ Zip _____

Translated by: _____ (initials)

() Victim Notification sent

FILED

2010 JUL 21 PM 5:03

BY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

State of Idaho vs. Abraham Vargas

CR-2010-0002088

Hearing type: Motion to Suppress / PTC / Motion re: Jury Instructions

Hearing date: 7/21/2010

Time: 3:07 pm

Judge: Michael R Crabtree

Courtroom: District

Court reporter: Denise Schloder

Minutes Clerk: Tara Gunderson

Defense Attorney: Brian Tanner

Prosecutor: Blaine Cannon

The defendant is present with Counsel.

Court will hear the motion regarding Jury Instructions at the time of trial.

Blaine Cannon addresses the Court.

Brian Tanner addresses the Court.

The Court addresses counsel; cites this matter is 2nd set for trial.

Blaine Cannon cites the State will be prepared for trial.

Brian Tanner addresses the Court regarding witnesses.

Blaine Cannon calls State's # 1 witness – Det. Dan Renz.

3:08 p.m. Direct examination of witness by Blaine Cannon.

3:22 p.m. Objection by Brian Tanner; speculation.

3:23 p.m. Blaine Cannon addresses the Court.

Objection overruled by the Court.

3:26 p.m. The witness reviews State's Exhibit # 1 – Spanish Form Constitutional Rights

3:42 p.m. Objection by Brian Tanner.

Question withdrawn by the State.

3:50 p.m. Brian Tanner addresses the Court re: discrepancy of witness's testimony of the interview and his notes of the interview; cites he may wish to have the Court review the video.

Blaine Cannon addresses the Court.

3:53 p.m. Cross examination of witness by Brian Tanner.

3:56 p.m. Objection by Blaine Cannon.

3:57 p.m. Brian Tanner rephrases the questions.

3:58 p.m. Objection by Blaine Cannon; relevance.

3:58 p.m. Brian Tanner reviews relevance.

3:58 p.m. Objection overruled by the Court.

4:02 p.m. Objection by Blaine Cannon; form of question.

4:02 p.m. Court addresses Counsel.

4:03 p.m. Brian Tanner rephrases the question.

4:03 p.m. Objection by Blaine Cannon; form of question.

4:04 p.m. Objection overruled by the Court.

4:08 p.m. Objection by Blaine Cannon.

Court instructs Counsel to rephrase the question.

4:14 p.m. Re-direct examination of witness by Blaine Cannon.

4:19 p.m. Counsel have no further questions for the witness, the witness steps down.

The State has no further witnesses.

The defense has no witnesses.

4:20 p.m. Closing argument by Blaine Cannon on behalf of the State of Idaho.

4:34 p.m. Closing argument by Brian Tanner on behalf of the defendant.

4:38 p.m. Blaine Cannon addresses the Court.

4:42 p.m. The Court cites considerations for DENYING the Defendant's Motion to Suppress.

4:51 p.m. The State is to prepare the order formalizing the Courts ruling.

4:52 p.m. Blaine Cannon addresses the Court.

4:53 p.m. Pretrial Conference set for July 27, 2010 at 8:45 a.m. (Brian Tanner to call in).

4:54 p.m. Hearing concludes.

FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

2010 JUL 21 PM 5:03

State of Idaho, Plaintiff)

-vs-)

Abraham Vargas
Defendant)

CASE NO. BY-20-10-2085

Notice of Hearing and Order
for Defendant to Appear

Notice is given that this matter will come on for hearing as set forth below. Defendant is required to appear at all proceedings scheduled.

Hearing: () Arraignment / Entry of Plea () Status Conference
() Motion: _____
() Change of Plea () Sentencing () Other: _____

Hearing Date and Time: _____, 20__ at 845, A. M.

Trial: () Jury () Court () Probation Violation

Pre-trial Conference: July 27, 2010 at 845, A.M.

Trial Date and Time: _____, 20__ at _____, __.M.

Date: 7/21, 2010

District Judge: M. K. Smith

Certification by Defendant

By his/her signature below, Defendant certifies that he/she personally received a copy of this Notice of Hearing and Order to Appear.

Date: 7/21, 2010 Defendant's Signature: Abraham Vargas

Mailing Address: _____ City _____ State _____ Zip _____

Translated by: _____ (initials)

() Victim Notification sent

Notice of Hearing and Order to Appear

White-to Court

Yellow-to Prosecutor

Green-to Defense Atty

Goldenrod- to Defendant

Rev, 1-10

000100

FILED _____

2010 JUL 22 PM 3:48

DEE YEAMAN

BY _____

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRISWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
Facsimile: 208.878.2924

5 Attorneys for State of Idaho

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
7 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

9 STATE OF IDAHO,

Case No. **CR-2010-002088 D**

10 Plaintiff,

11 vs.

JURY TRIAL
WITNESS LIST

12 **ABRAHAM VARGAS,**

13 Defendant.
14 _____/

15 COMES NOW Blaine Cannon, Deputy Prosecuting Attorney for Cassia County,
16 Idaho, and moves the Court to submit the following witness list for the jury trial scheduled for **July**
17 **28th, 2010, at 9:00 a.m.:**

- 18 1. Dan Renz, Cassia County Sheriff's Office
- 19 2. Brice Nelson, Cassia County Sheriff's Office
- 20 3. Mark Merrill, Cassia County Sheriff's Office
- 21 4. Noah Shiner, Cassia County Sheriff's Office
- 22 5. Kaye Young
- 23 6. Manuel Santos
- 24 7. Eric Staley

25 DATED the 22 day of July, 2010.

26 **BLAINE P. CANNON**
Deputy Prosecuting Attorney

27 
28 _____

JURY TRIAL WITNESS LIST - 1

H:\Shantel\County Criminal\Jury Instructions\Defendants Vargas, Abraham\Witness List-Blaine.wpd

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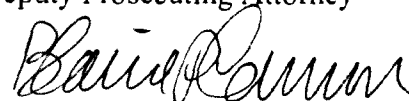
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CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 2010, I caused a true and correct copy of the foregoing JURY TRIAL WITNESS LIST to be served upon the attorney named below in the manner noted:

Brian Tanner
Attorney at Law
516 Hansen Street East
Twin Falls, Idaho 83301

BLAINE P. CANNON
Deputy Prosecuting Attorney



JURY TRIAL WITNESS LIST - 2

H:\Shantel\County Criminal\Jury Instructions\Defendants\Vargas, Abraham Witness List-Blaine.wpd

000102

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DALLIN J. CRESWELL** (ISB #7741)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208.878.0419
Facsimile: 208.878.2924

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 JUL 22 PM 5:02

DEPT. CLERK

BY

6 Attorneys for State of Idaho
10-46

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

9
10 **STATE OF IDAHO,**

Case No. CR-2010-02088 D

11 Plaintiff,

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

12 vs.

13 **ABRAHAM CEJA VARGAS,**

14 Defendant.
15 _____ /

16 THIS MATTER was duly-noticed for hearing on the Defendant's Motion To
17 Suppress on July 21, 2010. Present was the defendant and his counsel, Brian Tanner; present
18 representing the State of Idaho was Blaine Cannon, Cassia County Deputy Prosecutor.

19 NOW THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion To
20 Suppress be, and the same hereby is, denied.

21 DATED this 22^d day of July 2010

22
23 
24 District Judge

25
26
27 **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS - 1**

28 IF Shantel County Criminal Mo, Orders, Objections, Stip Order Deny Mo Suppress wpd

000103

1
2 **CLERK'S CERTIFICATE OF MAILING**

3 I hereby certify that a true and correct copy of the foregoing Order was mailed,
4 postage prepaid, this 22 day of July, 2010, to the following:

5 Alfred E. Barrus
6 Prosecuting Attorney
7 P. O. Box 7
8 Burley, ID 83318

9 Brian Tanner
10 Attorney at Law
11 516 Hansen Street East
12 Twin Falls, Idaho 83301

13 DEE V. YEAMAN
14 CLERK OF THE DISTRICT COURT

15 By 

16 Deputy Clerk
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28 **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS - 2**

H:\Shantel\County Criminal Mo. Orders, Objections, Stip Order Deny Mo Suppress wpd

000104

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 JUL 26 PM 12:10

DEE YEAMAN

BY

1 ALFRED E. BARRUS (ISB #1704)

Prosecuting Attorney

2 BLAINE P. CANNON (ISB #5575)

Deputy Prosecuting Attorney

3 DALLIN J. CRESWELL (ISB #7741)

Deputy Prosecuting Attorney

Cassia County, Idaho

1918 Overland Avenue

Post Office Box 7

4 Burley, Idaho 83318

Telephone: 208.878.0419

Facsimile: 208.878.2924

6 Attorneys for State of Idaho

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

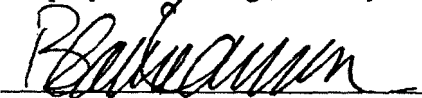
Case No. CR-2010-002088 D

11 Plaintiff,

12 vs.

PLAINTIFF'S REQUESTED
JURY INSTRUCTIONS

13 ABRAHAM VARGAS,

14 Defendant.
15 _____/16 COMES NOW, the above-named plaintiff, by and through its attorney, Blaine P.
17 Cannon and moves this Honorable Court to charge and instruct the jury in the above-entitled action
18 in accordance with the attached instructions.19 DATED this 26 day of July, 2010.20 BLAINE P. CANNON
Deputy Prosecuting Attorney21 
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28 PLAINTIFF'S REQUESTED JURY INSTRUCTIONS - 1

H:\Shantel\County Criminal\Jury Instructions\Defendants\Vargas, Abraham\States Proposed Jury Instructions-Blaine.wpd

000105

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of July, 2010, I served a copy of the within and foregoing Plaintiff's Requested Jury Instructions upon the following attorney named below in the manner noted:

Brian Tanner
Attorney at Law
516 Hansen Street East
Twin Falls, Idaho 83301

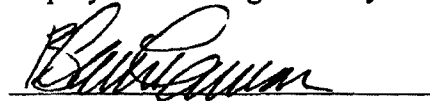
☒ by depositing a copy thereof in the United State's mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.

☐ by hand delivering copies of the same to the office of the attorney at the address above indicated.

☒ by telecopying copies of the same to said attorney at his/her telecopy number of _____, and then by mailing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.

☐ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County Courthouse in Burley, Idaho.

BLAINE P. CANNON
Deputy Prosecuting Attorney



PLAINTIFF'S REQUESTED JURY INSTRUCTIONS - 2

H:\Shantel\County Criminal\Jury Instructions\Defendants\Vargas, Abraham\States Proposed Jury instructions-Blaine.wpd

000106

ICJI 547 THEFT BY POSSESSION OF STOLEN PROPERTY

INSTRUCTION NO. ____

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or between the 20th day through the 22nd day of March, 2010,
2. in the state of Idaho
3. the defendant, ABRAHAM CEJA VARGAS, knowingly possessed tubing, shafts, pipes, and well casing,
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:

(a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or

(b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or

(c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

Comment

I.C. § 18-2403(4).

000107

GIVEN: _____
REJECTED: _____
MODIFIED: _____
COVERED: _____

000108

ICJI 571 OWNER DEFINED

INSTRUCTION NO. _____

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

Comment

I.C. § 18-2402(6).

GIVEN: _____
REJECTED: _____
MODIFIED: _____
COVERED: _____

000109

ICJI 573 PROPERTY DEFINED

INSTRUCTION NO. _____

"Property" means anything of value including labor or services.

Comment

I.C. § 18-2402(8).

"Property" as defined in the code is an expansive concept. Other specific definitions of property may be found in IC § 18-2402(8). As may be necessary, these specific examples can be inserted in the instruction.

Prior Idaho case law supports the proposition that the word "property" includes all valuable rights or interests which are protected by law. *See State v. Davis*, 81 Idaho 61, 336 P.2d 692 (1959).

GIVEN: _____
REJECTED: _____
MODIFIED: _____
COVERED: _____

000110

ICJI 574 THEFT—DEFINED

INSTRUCTION NO. ____

A person steals property and commits theft when, with intent to deprive another of property or appropriate the same to the person or to a third party, such person wrongfully takes, obtains, or withholds such property from an owner thereof.

Comment

I.C. § 18-2403(1).

This instruction should be used in conjunction with an appropriate Burglary instruction only when Theft is not charged as a separate count. If an instruction defining "intent to deprive" is to be used also, see ICJI 562.

GIVEN: _____
REJECTED: _____
MODIFIED: _____
COVERED: _____

000111

ICJI 575 VALUE DEFINED

INSTRUCTION NO. _____

The term "value" as used in these instructions means as follows:

The market value of the property at the time and place of the crime, or if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

Comment

I.C. § 18-2402(a)(11).

Price tags are competent evidence of value for establishing grand larceny from a retail store. *State v. McPhie*, 104 Idaho 652, 662 P.2d 233 (1983).

[Revised July 2005]

GIVEN: _____
REJECTED: _____
MODIFIED: _____
COVERED: _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Case No. CR-2010-002088 D

Plaintiff,

vs.

VERDICT OF THE JURY

ABRAHAM CEJA VARGAS,

Defendant.

We, the Jury, duly empaneled and sworn to try the above entitled action, for our
verdict, unanimously find the defendant, ABRAHAM CEJA VARGAS:

GRAND THEFT BY POSSESSION

Guilty _____

Not Guilty _____

DATED this _____ day of _____, 20____.

Presiding Juror _____

000113

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 JUL 27 PM 3:43

BY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

CR-2010-0002088

State of Idaho vs. Abraham Vargas

Hearing type: Status

Hearing date: 7/27/2010

Time: 8:50 am

Judge: Michael R Crabtree

Courtroom: District

Court reporter: Denise Schloder

Minutes Clerk: Tara Gunderson

Defense Attorney: Brian Tanner via TCC

Prosecutor: Blaine Cannon

The defendant is NOT present; pursuant to Counsel's instruction.

Court inquires of Counsel re: status of trial.

Brian Tanner cites this matter will proceed to trial.

Brian Tanner addresses the Court re: jury instructions.

Blaine Cannon has no issues to take up prior to trial.

Court addresses Counsel re: orientation.

Brian Tanner addresses the Court re: witnesses; inquires regarding time frames.

Blaine Cannon responds.

Court addresses Counsel.

8:54 a.m.

Hearing concludes.

000114

JUDGE MICHAEL CRABTREE

TIME IN

CASE CR2010-2088

JURY SELECTED

DISTRICT COURT
CASSIA COUNTY IDTRIAL DATE: 7-28-2010
ABRAHAM VARGAS

JURY FINISHED

FILED JUDGEMENT

2010 JUL 29 PM 2:48

JUROR#

(Start: 30 Skip: 32)

RANDOM

NO ROLL

SEAT EXC SHOW CALL VOIR PER CAUSE JI

DM/0000372 HENDRIX, BONNIE ELAINE	1							
DM/0000486 CURTIS, JANICE C Δ	2					X		
DM/0000503 BOSTON, NINFA DAVILA <i>medical condition</i>	3	X						
DM/0000458 VELA, JOHNNY π	4					X		
DM/0000490 MORGAN, JAYNEE LYNN π	5					X		
DM/0000477 COOPER, ELLEN MARGARETE Δ	6					X		
DM/0000444 SMITH, RICHARD CHARLES π	7					X		
DM/0000352 TILLEY, ANNELIESE ELLEN π	8					X		
DM/0000472 DENAUGHEL, BRENDA MARIE π	9					X		
DM/0000424 PICKERING, MARVA READER	10							
DM/0000387 DARLINGTON, AMBER REIN Δ	11					X		
DM/0000364 JONES, STEPHANIE FORSBERG	12	X						
DM/0000406 BOWERS, MARK LAMAR Δ	13					X		
DM/0000473 TINCHER, PHILLIP MATTHEW	14							
DM/0000451 WELLS, STEFFANY DAHL	15							
DM/0000404 LOVELAND, MELODY L	16							
DM/0000402 SOULSBY, MARK EUGENE	17							
DM/0000491 BURTON, BLAIN ALAN	18		X					
DM/0000488 HARMAN, GREGG M	19	X						
DM/0000361 MCMURRAY, CATHERINE	20	X						
DM/0000401 STUTZMAN, MARSHALL SCOTT	21							
DM/0000351 KILTON, JAMES EDWARD	22		X					
DM/0000397 CATMULL, KURT ARBON <i>medical condition</i>	23		X					

JUDGE MICHAEL CRABTREE TIME IN _____CASE CR2010-2088 JURY SELECTED _____TRIAL DATE: 7-28-2010 JURY FINISHED _____ JUDGEMENT _____
ABRAHAM VARGAS

(Start: 30 Skip: 32) RANDOM NO ROLL

JUROR# SEAT EXC SHOW CALL VOIR PER CAUSE JU

DM/0000369 NANNENGA, SCOTT CRAIG	24	X						X
DM/0000377 WOODHOUSE, DIANE Δ	25					X		X
DM/0000448 GRISENTI, JANICE ANN	26							8
DM/0000398 OSTERHOUT, KIMBERLY ARCA	27							9
DM/0000411 EVANS, KELLI ANN	28							10
DM/0000469 JENSEN, JESSICA INEZ Δ	29					X		X
DM/0000445 BRIANO, ANTONIO PONCE	30		X					X
DM/0000396 OTTLEY, DENIS OMEN	31		X					X
DM/0000383 HARRIS, JACKIE LYN	32							11
DM/0000386 HERNANDEZ, PEDRO	33		X					X
DM/0000497 SPRATLING, JOHN B Δ	34					X		X
DM/0000385 HARRIMAN, CHRISTOPHER SCOTT	35							12
DM/0000374 STOKES, SARAH EUFRACIA	36							13
DM/0000501 GERRATT, KAYLA	37							
DM/0000381 HARPER, JOSHUA	38		X					X
DM/0000459 WILLIAMS, FURIOUS REEFER H	39		X					X
DM/0000405 BOWEN, JORDAN ALMA	40							
DM/0000362 JAMISON, BEVERLY JUNE	41							
DM/0000391 CARR, TINA MARIE	42							
M/0000507 DUTSON, AARON DEXTER	43		X					X
M/0000380 HARRIS, TERRI G	44							
M/0000500 YORK, STACIE LEE	45							
M/0000394 PASKETT, ILA R	46							

JUDGE MICHAEL CRABTREE TIME IN _____CASE CR2010-2088 JURY SELECTED _____TRIAL DATE: 7-28-2010 JURY FINISHED _____ JUDGEMENT _____
ABRAHAM VARGAS(Start: 30 Skip: 32) RANDOM NO ROLL
JUROR# SEAT EXC SHOW CALL VOIR PER CAUSE JU

DM/0000427 RIDGEWAY, JERRY NEIL	47							
DM/0000407 COX, GARY LEVI	48							
DM/0000494 SURRA-DAYLEY, JENNIFER RAE	49							
DM/0000425 JACKSON, SUMMER ANN	50	X						X
DM/0000357 SELLERS, MIKE NOLEN	51							
DM/0000474 HENDERSON, FERN LOUISE	52							
DM/0000502 MUSICK, JASON LYNN	53		X					X
DM/0000485 MORIN, MELISSA	54							
DM/0000409 TAYLOR, COBIE	55		X					X
DM/0000430 EMERY, LORI SUE	56							
DM/0000423 WICKEL, HARVEY LOUIS	57		X					X
DM/0000416 STAUFFER, ZACHARY SCOTT	58		X					X
DM/0000438 HIGLEY, TED V	59							
DM/0000395 SETSER, STACEY RENEE	60							

DISTRICT COURT
CASSIA COUNTY ID

FILED

2010 JUL 29 PM 2:48

DEE HAN

BY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

State of Idaho, Plaintiff

-vs-

Abraham Ceja Vargas
Defendant.

CASE NO. CR- 2010-2088

Peremptory Challenges

Plaintiff

Defense

BT 1. Juror: Brenda DeNaughel
Seat # 9 Juror # 472

Juror Diane Woodhove
Seat # 25 Juror # 377

BPC

BT 2. Juror: Annaliese Tilley
Seat # 8 Juror # 352

Juror Margaret Cooper
Seat # 6 Juror # 477

BPC

BT 3. Juror: Johnny Vela
Seat # 4 Juror # 458

Juror Ambler Fern Darlington
Seat # 11 Juror # 307

BPC

BT 4. Juror: Jayne Morgan
Seat # 5 Juror # 490

Juror Mark Lamar Bennett
Seat # 13 Juror # 406

BPC

BT 5. Juror: Richard Charles Smith
Seat # 7 Juror # 444

Juror Jessie Jensen
Seat # 29 Juror # 469

BPC

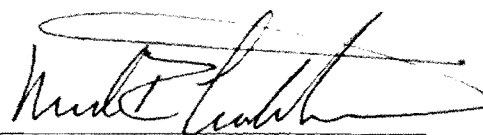
R.N. 6. Juror: PASS
Seat # _____ Juror # _____

Juror Janice Curtis BPC
Seat # 2 Juror # 496

B.N. 7. Juror: PASS
Seat # _____ Juror # _____

Juror John B Spradley BPC
Seat # 3-1 Juror # 497

Date: July 28, 2010.


Michael R. Crabtree, District Judge

Jury Panel

State of Idaho
Plaintiff

Blaine Cannon
Prosecuting Attorney

Case No. CR2010-2088

Abraham Vargas
Defendant

Brian Tanner
Defendant's Attorney

Date: Wednesday, July 28, 2010

1 Bonnie Hendrix	2 Marva Pickering	3 Phillip Tincher	4 Steffany Wells	5 Melody Loveland	6 <i>Mark Soulsby</i> Mark Soulsby	7 Marshall Stutzman
8 Janice Grisenti	9 Kimberly Osterhout	10 Kelli Evans	11 Jackie Harris	12 Christopher Harriman <i>Presiding JUDGE</i>	13 Sarah Stokes	

BY

DEB HAN

FILED
JUL 29 PM 2:48

DISTRICT COURT
CASSIA COUNTY ID

000120

FILED _____

2010 JUL 29 PM 2:48

JERRY VAN

BY _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

THE STATE OF IDAHO,

Plaintiff,

VS.

ABRAHAM VARGAS,

Defendant.

Case No. CR-2010-2088

PRELIMINARY JURY INSTRUCTIONS

MEMBERS OF THE JURY: The following are the Preliminary Instructions in this case for the guidance of the jury. Individual copies of these Preliminary Instructions are provided to you for your use. You may read along if you wish as these Instructions are given. You may make notes upon your copies if you wish.

Once the evidence has been fully presented I will give you a set of Final Instructions. Those Final Instructions, together with these Preliminary Instructions, will control your deliberations.

At the conclusion of this case, the Bailiff will recover your notebooks from you and will shred the contents.

INSTRUCTION NO. 1

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 2

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

INSTRUCTION NO. 3

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should

apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

INSTRUCTION NO. 4

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 5

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 6

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 7

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any

other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television, internet or other account of what may have happened.

Sixth, you are reminded again that, during the course of this trial and during your deliberations, you are not to make contact with any person about this case by means of the internet, cell phones or other electronic communication devices. You are not to post or text message any comments about this case on any blog or other electronic site. The bailiff will be storing your cell phones and other communication equipment during sessions in court, but you are left on your honor during those times court is not in session. Thank you.

INSTRUCTION NO. 8

It is highly probable that, during the course of this trial, it will be necessary for me to excuse you and ask that you wait in the jury room while counsel for the parties and I discuss and try to resolve disputes over the admissibility of evidence, the propriety of proposed jury instructions, or other important legal issues that may affect the trial. On occasion, I may declare an early recess, or have you come in later than normal in order not to keep you waiting while we do this.

Let me assure you that while you are waiting, we are working. Let me also assure you that both the attorneys and I know that your time is valuable, and understand that delays which keep you waiting can be frustrating. Both they and I will do everything reasonably possible to expedite the presentation of evidence so that you can complete your duties and return to your normal lives as soon as possible. I know that you understand that these proceedings are extremely important to the parties, and your patience will help ensure that the final outcome is just and legally correct.

DISTRICT COURT
CASSIA COUNTY ID

FILED _____

2010 JUL 29 PM 2:49

DECEASED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

THE STATE OF IDAHO,)	
	)	Case No. CR-2010-2088
Plaintiff,)	
)	
vs.)	
)	
ABRAHAM VARGAS,)	
)	
Defendant.)	
_____)	

FINAL JURY INSTRUCTIONS

MEMBERS OF THE JURY: I will now give you the following instructions before you begin the process of deliberating your verdict in this case. These Final Jury Instructions, along with the Preliminary Jury Instructions which were given to you earlier in the trial, will control your deliberations. After I have given you these instructions, counsel for the parties will deliver their closing arguments.

The Bailiff will hand to you a special notebook containing the court's original jury instructions and a verdict form. The Presiding Juror will take possession of the special notebook. Please do not write on the original jury instructions. You may highlight or write on your own copies of the instructions as you see fit.

000132

INSTRUCTION NO. 9

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 10

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 11

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during

the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 12

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 13

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 14

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or about the 20th day through the 22nd day of March, 2010,
2. in the state of Idaho
3. the defendant, Abraham Ceja Vargas, knowingly possessed tubing, shafts, pipes and well casing, ,
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:
 - (a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or
 - (b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or
 - (c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty.

If each of the above has been proven beyond a reasonable doubt, then you must find the

defendant guilty.

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

INSTRUCTION NO. 15

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

INSTRUCTION NO. 16

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

INSTRUCTION NO. 17

"Property" means anything of value including labor or services.

INSTRUCTION NO. 18

The term "value" as used in these instructions means as follows:

The market value of the property at the time and place of the crime, or, if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

INSTRUCTION NO. 19

Theft is classified into two degrees: Grand Theft and Petit Theft. If you find the defendant guilty of Theft, then you must determine whether the crime was Grand Theft or Petit Theft. The state has the burden of proving beyond a reasonable doubt that the theft is Grand Theft. You must state the degree in your verdict.

The theft of property which exceeds one thousand dollars (\$1,000) in value is Grand Theft.

Any theft that is not Grand Theft is Petit Theft.

INSTRUCTION NO. 20

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 21

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 22

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 23

This court seeks a fair trial for all persons, regardless of the language they speak and regardless of how well they may or may not speak English.

Bias for or against persons who have little or no proficiency in English because they do not speak English is not allowed.

Therefore, do not allow the fact that a party or a witness requires an interpreter to influence you in any way. Treat the interpretation of the proceedings here in court as though they were being conducted in English and no interpreter was present.

If any of you understand the language of the party or a witness, please disregard completely what is said. Consider as evidence only what is provided by the interpreter in English. Even if you think the interpreter has made a mistake, you must ignore it completely and make your deliberations solely on the basis of the interpretation.

INSTRUCTION NO. 24

In this case you will return a special verdict, consisting of a series of questions. Although the explanations on the special verdict form are self-explanatory, they are part of my instructions to you. I will now read the special verdict form to you. It states:

"We, the Jury, duly empaneled and sworn to try the above entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

QUESTION NO. 1: Is defendant Abraham Ceja Vargas not guilty or guilty of Theft?

Not Guilty _____ Guilty X

If you unanimously answered Question No. 1 "**Guilty**", then you must answer Question No. 2.

If you unanimously answered Question No. 1 "**Not Guilty**", then simply sign the verdict form and return with it to court.

QUESTION NO. 2: Is the crime Grand Theft?

Yes X No _____"

The special verdict form then has a place for it to be dated and signed. You should sign the special verdict form as explained in another instruction.

Charles A. Harris

INSTRUCTION NO. 25

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

DISTRICT COURT
CASSIA COUNTY ID

PSI- Aug 03, 2010 2:49 PM
FILED
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

State of Idaho, Plaintiff)

-vs-)

Abraham Vargas
Defendant)

CASE NO. CR-20-10-3058

Notice of Hearing and Order
for Defendant to Appear

Notice is given that this matter will come on for hearing as set forth below. Defendant is required to appear at all proceedings scheduled.

Hearing: () Arraignment / Entry of Plea () Status Conference
() Motion: _____
() Change of Plea (X) Sentencing () Other: _____

Hearing Date and Time: Sept 24, 2010 at 11:00, A.M.

Trial: () Jury () Court () Probation Violation

Pre-trial Conference: _____, 20__ at _____, __.M.

Trial Date and Time: _____, 20__ at _____, __.M.

Date: 7/29, 2010.

District Judge: [Signature]

Certification by Defendant

By his/her signature below, Defendant certifies that he/she personally received a copy of this Notice of Hearing and Order to Appear.

Date: 7/29, 2010 Defendant's Signature: Abraham Vargas

Mailing Address: _____ City _____ State _____ Zip _____

Translated by: NK (initials)

() Victim Notification sent

Notice of Hearing and Order to Appear

White-to Court

Yellow-to Prosecutor

Green-to Defense Atty

Goldenrod- to Defendant

Rev. 1-10

000153

RESET (Clerk, check if applicable)

ORIGINAL TO THIS DOCUMENT TO IDOC

Assigned to: CASSIA COUNTY ID

Assigned: Due Date:

Fifth Judicial District Court, State of Idaho
In and For the County of Cassia

2010 JUL 29 PM 3:30

Case No: CR-2010-0002088

ORDER FOR PRESENTENCE REPORT
AND EVALUATIONS

STATE OF IDAHO
Plaintiff,

vs.

Abraham Vargas
1800 Almo Avneue
Burley, ID 83318
Defendant.

On this Thursday, July 29, 2010, a **Pre-sentence Investigation Report** was ordered by the Honorable Michael R Crabtree to be completed for Court by September 10, 2010

PSI INTERVIEW SET FOR: August 03, 2010 at 1:00 p.m.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under § 19-2524 the following is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to I.C. 19-2524(4):

- ☐ Mental Health Examination as defined in I.C.19-2524(3), including any plan for treatment; and/or
☐ Substance Abuse Assessment which is defined as an evaluation based upon objective evidence to determine whether the defendant meets the definition of a substance abuser (I.C. 39-302(11)), a drug addict (I.C. 39-302(3)) and/or an alcoholic (I.C. 39-302(4)), including any plan of treatment.

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator:

PROSECUTOR: County Prosecutor **DEFENSE COUNSEL:** Brian M Tanner

THE DEFENDANT IS IN CUSTODY: ☐ NO **PLEA AGREEMENT:** FOUND GUILTY AT TRIAL

CHARGE(s): GRAND THEFT

Michael R. Crabtree
District Judge

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ YES

Name: Abraham Vargas

☐ Male

Address: 1800 Almo Avneue City: Burley State: ID ZIP: 83318

Telephone: _____ Message Phone: _____ Work Phone: _____

Employer: _____ Work Address: _____

Date of Birth: _____ Social Security Number: _____

Name & Phone Number of nearest relative: _____

Date of Arrest: _____ Arresting Agency: _____

Your assigned Pre-sentence Investigator will contact you to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview. (5/2008)

000154

FILED

2010 JUL 29 PM 2:48

DEWEYMAN

BY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

State of Idaho vs. Abraham Vargas
CR-2010-0002088
Hearing type: Jury Trial
Hearing date: 7/28/2010
Time: 9:15 am
Judge: Michael R Crabtree
Courtroom: District
Court reporter: Denise Schloder
Minutes Clerk: Tara Gunderson
Defense Attorney: Brian Tanner
Prosecutor: Blaine Cannon
Interpreter: Naomi Alanis

Jury Video presented to the jurors prior to Court starting this morning.

Counsel are each ready to proceed.

The Court addresses jurors re: cell phones; confirms that the jurors have viewed the jury video; and payment vouchers have been filled out.

9:16 a.m. Roll call of jurors by Jury Commissioner.

Jurors who failed to appear: Blaine Burton; James Kilton; Antonio Briano; Denis Ottley; Pedro Hernandez; Joshua Harper; Furious Reefer Williams; Aaron Dutson; Jason Musick; Cobie Taylor; Harvey Wickel; Zachary Stauffer.

Counsel do not intend to submit challenge to the jury.

9:21 a.m. Court introduces officers of the Court.

9:25 a.m. Court addresses prospective jurors; reviews nature of the case and reviews case to date with prospective jurors. Information read by the Clerk to the jurors.

9:27 a.m. The Court instructs the jurors that the defendant has plead not guilty to the charge contained in the information; reviews the jurors' duty to review the facts of the case and to decide the case.

Court instructs jurors that they are not to discuss this case nor form any opinion regarding the case during the pendency of the case.

9:29 a.m. The Court reviews the parties of the case; Mr. Blaine Cannon is present on behalf of the State of Idaho; Mr. Brian Tanner is present on behalf of the defendant Abraham Vargas.

9:30 a.m. Voir Dire oath given to jurors.

9:32 a.m. Court explains the Voir Dire selection process alternative juror and preemptory challenge.

9:34 a.m. Voir Dire of jurors by the Court.
Juror # 5 - reviews her disability.
Juror # 23 - reviews his medical condition; cites he is in pain medication.

9:37 a.m. Court excuses juror # 23 for medical condition.
Juror # 3 - reviews bladder problems.
Court excuses juror # 3 for medical condition.
Juror # 24 - reviews extreme hardship
Court excuses juror # 24 for public necessity.

9:40 a.m. Court reviews list of potential witnesses.

9:49 a.m. Juror # 45 addresses the Court.

9:50 a.m. Juror # 6 addresses the Court.

9:55 a.m. The Court a lots 15 minutes for each Counsel to conduct voir dire.

9:56 a.m. Voir Dire of jurors by Blaine Cannon on behalf of the State of Idaho.

9:59 a.m. Blaine Cannon passes the jurors for cause.

10:00 a.m. Court instructs the jurors to not discuss this case amongst themselves or with anyone else during the recess.
Court in recess.

10:16 a.m. Court resumes.
Blaine Cannon addresses the Court re: Juror # 25 Diane Woodhouse approaching him during the recess; citing she knew one of the witnesses.

10:17 a.m. The Court addresses Juror # 25.
The Court introduces the Court interpreter - Naomi Alanis.

10:18 a.m. Voir Dire of jurors by Brian Tanner.

10:25 a.m. Objection by Blaine Cannon.
The Court cites it will instruct the jurors of definitions.

10:27 a.m. The defense passes the jurors for cause.

10:28 a.m. Peremptory challenge.

10:41 a.m. The Court reviews final jury panel: Bonnie Hendrix; Marva Pickering; Phillip Tincher; Stephanie Wells, Melody Loveland; Mark Soulsby; Marshall Stutzman; Janice Grisentil Kim Osterhout; Kelli Evans; Jackie Harris; Chirstopher Harriman; Sarah Stokes.

10:44 a.m. Counsel have no objection to the jury panel.
The Court addresses the Jurors.
Jurors sworn by Clerk.

10:45 a.m. The Court thanks the remaining jury panel for their service and dismisses them.

10:46 a.m. The Court admonishes the jurors to not associate with any of the parties involved; not to discuss this case with anyone or even amongst themselves; do not use the internet nor books for assistance in this case.

10:48 a.m. Court excuses jurors.
Court addresses Counsel re: pre-proof instructions.
Counsel have no objections to he pre-proof instructions.
Brian Tanner addresses the Court re: witness.
The Court reviews witness the State may call.

10:51 a.m. Brian Tanner addresses the Court re: jury instructions.
The Court addresses Counsel.

10:51 a.m. Court in recess.
11:06 a.m. Court resumes.
Counsel have no objection to the preliminary jury instructions

11:08 a.m. Counsel stipulate jurors are present and in their proper seats.
The Court reviews jury notebook.

11:09 a.m. The Court reviews preliminary jury instructions as the jurors follow along in their juror notebooks.

11:22 a.m. State's opening statement by Blaine Cannon.

11:41 a.m. Defendant's opening statement by Brian Tanner.

11:51 a.m. The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

11:52 a.m. Court in recess.

1:16 p.m. Court resumes.
Counsel have no preliminary matters.

1:17 p.m. Counsel stipulate jurors are present and in their proper seats.

1:18 p.m. Blaine Cannon calls **State's # 1 witness - Officer Mark Merrill.**
Witness sworn by clerk.

1:18 p.m. Direct examination of the witness.

1:24 p.m. The witness identifies the defendant.

1:25 p.m. Witness reviews Plaintiff's Exhibit # 103 - Color photo copy of Abraham Vargas' drivers license.

1:28 p.m. Cross examination of witness by Brian Tanner on behalf of the defendant.

1:29 p.m. Re-direct examination of witness by Blaine Cannon.

1:30 p.m. Objection by Brian Tanner; cites leading.
Objection OVERRULED by the Court.

1:31 p.m. Objection by Brian Tanner; cites leading.
Objection SUSTAINED by the Court.

Blaine Cannon moves for the admission of State's Exhibit # 103.

No objection by Brian Tanner

The Court ADMITS State's Exhibit # 103 - Color photo copy of Abraham Vargas' drivers license.

1:32 p.m. Blaine Cannon calls State's # 2 witness - Eric Staley.
Witness sworn by Clerk.

1:33 p.m. Direct examination of witness by Blaine Cannon.

1:36 p.m. Objection by Brian Tanner; lack of foundation.

Blaine Cannon will ask additional questions.

Objection by Brian Tanner; cites here say.
Objection OVERRULED by the Court.

1:38 p.m. Objection by Brian Tanner; foundation.
Objection OVERRULED by the Court.

1:52 p.m. Cross examination of witness by Brian Tanner.

2:02 p.m. Re-direct examination of witness by Blaine Cannon.

2:02 p.m. Objection by Brian Tanner; cites leading.

Blaine Cannon withdraws the question.

2:03 p.m. Counsel have no further questions.
The witness is excused.

204 Blaine Cannon calls State's # 3 witness - Kaye Young.
Witness sworn by clerk.

2:05 p.m. Direct examination of witness by Blaine Cannon.

Blaine Cannon moves for the admission of State's Exhibit # 101 & # 102

The Court ADMITS State's Exhibit # 101 - color photo of metal and State's Exhibit # 102 - color photo of metal.

Clerk marks the exhibits "ADMITTED".

2:19 p.m. Cross examination of witness by Brian Tanner.

2:21 p.m. Re-direct examination of witness by Blaine Cannon.

2:21 p.m. Objection by Brian Tanner - leading.

Blaine Cannon rephrases the question.

The Court instructs the jurors to disregard the witnesses' last response.

2:23 p.m. Counsel have no further questions; the witness steps down.

2:23 p.m. The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

2:24 p.m. Court in recess.

2:36 p.m. Court resumes.

Court addresses Counsel regarding starting next witness.

Blaine Cannon cites he anticipates direct examination of the next witness to take approx. 45 minutes.

Brian Tanner addresses the Court regarding cross examination.

Blaine Cannon reviews potential witnesses; expects that the State's case will be done by noon tomorrow.

2:39 p.m. Counsel stipulate that the jurors are present and in their proper seats.

The Court addresses the jurors; excuses the jurors for the evening; instructs the jurors to return by 8:45 a.m. tomorrow morning.

2:41 p.m. The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

2:41 p.m. Court in recess.

JURY TRIAL - DAY 2 *(Thursday, July 29, 2010)*

9:01 a.m. Court resumes.
Brian Tanner addresses the Court regarding Jury Instruction re: value.

9:03 a.m. The Court addresses Counsel.

9:05 a.m. Counsel stipulate that the jurors are present and in their proper seats.

9:05 a.m. Blaine Cannon calls State's # 4 witness - Manuel Santos.
Witness sworn by Clerk.

9:06 a.m. Direct examination of witness by Blaine Cannon.

9:12 a.m. Objection by Brian Tanner - leading.
Blaine Cannon rephrases the question.

9:15 a.m. Cross examination of witness by Brian Tanner.

9:19 a.m. The witness reviews Defendant's Exhibit A - documents of Santos booking keeping.

9:22 a.m. Objection by Blaine Cannon; cites misleading.
The Court instructs Counsel to restate the question.

9:26 a.m. Objection by Blaine Cannon.
Objection OVERRULED by the Court.

9:31 a.m. Counsel have no further questions. The witness steps down.
Brian Tanner moves for the admission of Defendant's Exhibit A.
Blaine Cannon believes the exhibit has defense counsel's notes.
The Court conditionally admits Defendant's Exhibit A - needs clean copy.

9:32 a.m. Blaine Cannon calls State's # 5 witness - Detective Dan Renz.
Witness sworn by Clerk.

9:33 a.m. Direct examination of witness by Blaine Cannon.

10:05 a.m. The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

10:06 a.m. Court in recess.

10:27 a.m. Court resumes.

10:29 a.m. Counsel stipulate that the jurors are present and in their proper seats.

10:30 a.m. Court addresses jurors regarding housekeeping matter (fire alarm may possibly go off).

10:30 a.m. Cross examination of witness by Brian Tanner.

10:51 a.m. Counsel have no further questions; the witness steps down.

10:51 a.m. Blaine Cannon addresses the Court regarding witness Brice Nelson; cites defense

counsel has an objection regarding testimony of witness.

10:52 a.m. The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

10:53 a.m. Blaine Cannon addresses the Court re: Offer of proof regarding witness Brice Nelson

10:59 a.m. Brian Tanner objects to the State calling Officer Brice Nelson as a witness; cites considerations.

11:03 a.m. Blaine Cannon continues to cite considerations for the Court to allow the State to call Officer Brice Nelson as a witness.

11:07 a.m. Response by Brian Tanner.

11:09 a.m. The Court notes the defendants' objection; overrules the objection and cites considerations for GRANTING the State's motion to call Officer Brice Nelson as a witness.

11:13 a.m. Court in recess.

11:20 a.m. Court resumes.

11:23 a.m. Counsel stipulate that the jurors are present and in their proper seats.
Blaine Cannon calls State's # 6 witness - Deputy Brice Nelson.
Witness sworn by Clerk.

11:24 a.m. Direct Examination of witness by Blaine Cannon on behalf of the State of Idaho.

11:29 a.m. The witness identifies the defendant.

11:36 a.m. Brian Tanner has no cross - the witness steps down.

11:37 a.m. Blaine Cannon cites the State's rests.
Brian Tanner cites they are prepared to proceed to closing argument.

11:38 a.m. The Court addresses the jurors; instructs them to return to the jury room by 1:00 p.m.
The Court admonishes the jurors to not discuss this case amongst themselves or with anyone else, nor form any opinions regarding this case during the break.

11:39 a.m. The Court addresses Counsel re: final jury instructions.

11:39 a.m. Court in recess.

11:47 a.m. Court resumes.
The Court addresses Counsel regarding jury instructions numbered 9-25.
Counsel have no objections to the verdict form.
The State has no objection to the Courts instruction

11:48 a.m. Brian Tanner addresses the Court re: instruction # 18.
The Court denies the defendant's request for specific instruction re: salvage value; cites considerations; continues to review Courts jury instructions.

11:54 a.m. Upon approval of Counsel ; the Court ADMITS Defendant's exhibit A.

11:54 a.m. Hearing concludes.

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12:59 a.m. Court resumes.

The Court has Counsel verify the names of the 13 jurors prior to placing them in the wheel.

Counsel stipulate that the names of all 13 jurors are there and are correct.

The Clerk places the 13 names in the jury wheel.

1:01 p.m. Counsel stipulate that the jurors are present and in their proper seats.

1:02 p.m. Final jury instructions presented and read to the jurors.

1:15 p.m. Closing argument by Blaine Cannon on behalf of the State of Idaho.

1:26 p.m. Closing argument by Brian Tanner on behalf of the defendant.

1:38 p.m. Final closing argument by Blaine Cannon.

1:47 p.m. The Court instructs the jurors that the case is now fully submitted.

The Court instructs the jurors re: alternate Juror.

1:49 p.m. The Clerk selects the alternate jurors name from the wheel: Mark Soulsby.

Alternate juror gives the bailiff his contact information.

1:49 p.m. Bailiff sworn by Clerk.

1:50 p.m. Jurors are excused to deliberate.

1:50 p.m. Court in recess.

2:17 p.m. Court resumes.

2:18 p.m. Counsel stipulate that the jurors are present and in their proper seats.

Christopher Harriman, presiding juror, presents the Court with the jury notebook.

The Court instructs the presiding juror to sign the jury verdict form.

2:20 p.m. Jury verdict form signed by presiding juror and reviewed by all other jurors.

The Jurors each indicate that they have reviewed the jury verdict form; and cite that that is their verdict.

2:22 p.m. Verdict read by the clerk: GUILTY OF GRAND THEFT.

Counsel do not wish for the jury panel to be pooled.

The Court finds the defendant GUILTY.

2:23 p.m. The Court addresses the jurors - thanks them for their service and excuses them.

PSI Interview set for: August 03, 2010 at 1:00 p.m.

Sentencing set for: September 24, 2010 at 11:00 a.m.

Defendant advised of right to appeal verdict.

Blaine Cannon addresses the Court

2:24 p.m. Hearing concludes.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO) Case No. CR 10-2088 D
Plaintiff,)
) TRIAL
vs.) WITNESS LIST
)
ABRAHAM VARGAS)
Defendant.)
)

STATE'S WITNESSES	Date:	7/28/10	07/29/10	07/30/10
# 1 - Officer Mark Merrill		X		
# 2 - Eric Staley		X		
# 3 - Kaye Young		X		
# 4 - Manuel Santos			X	
# 5 - Det. Dan Renz			X	
# 6 - Deputy Brice Nelson			X	
DEFENDANT'S WITNESSES	Date:	07/28/10	07/29/10	07/30/10

STATE'S TRIAL EXHIBITS

) Case No. CR 2010-2088
)
)
)
)
)
)
)
)

/

X

[illegible]

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

DEFENDANT'S TRIAL EXHIBITS

STATE OF IDAHO
Plaintiff,

vs.

ABRAHAM VARGAS
Defendant.

) Case No. CR 10-2088 D
)
)
)
)
)
)

SHOWN

/

EXHIBIT
NO.

ITEM

ADMITTED

X

		Date:	07/28/10	07/29/10	07/30/10
A	Santos Metals Recycling log			X	

FILED

2010 OCT 12 PM 12:17

CLERK OF COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

CR-2010-0002088

State of Idaho vs. Abraham Vargas

Hearing type: Sentencing

Hearing date: 10/12/2010

Time: 11:36 am

Judge: Michael R Crabtree

Courtroom: District

Court reporter: Denise Schloder

Minutes Clerk: Tara Gunderson

Defense Attorney: Brian Tanner

Prosecutor: Blaine Cannon

The defendant is present with Counsel.

Naomi Nevarez is present to interpret.

Brian Tanner addresses the Court.

The Court addresses the defendant.

Brian Tanner cites he has reviewed the PSI Report with the defendant.

Blaine Cannon addresses the Court; cites defense counsel is fluent in Spanish.

The defendant would like to continue.

11:40 a.m. Blaine Cannon makes recommendations on behalf of the State of Idaho; cites considerations.

11:48 a.m. Brian Tanner makes recommendations on behalf of the defendant; presents the Court with a receipt in which the defendant has paid restitution; cites considerations.

The State withdraws its request for restitution.

Brian Tanner presents the Court with character letters.

12:00 p.m. The Court inquires of Counsel re: sentencing recommendation.

Brian Tanner responds.

Blaine Cannon addresses the Court; clarifies that the State is not requesting restitution.

The Court cites there is a mandatory minimum of 1 year.

Brian Tanner addresses the Court.

The defendant does not wish to address the Court.

12:06 p.m. The Court comments; cites considerations for sentencing.

The Court imposes the Following:

1 year DET / 2 years IND - SUSPENDED

Probation not to exceed 3 years - *terms and conditions outlined in exhibit 1 - 180 days discretionary jail time; must obtain and/or achieve lawful resident; complete moral recognition and/or cognitive self change.*

Court Costs: \$ 125.50

2 days credit for time served

12:11 p.m. The defendant advised of right to appeal.

PSI Reports submitted to the clerk.

12:11 p.m. Hearing concludes.

FILED

2010 OCT 12 PM 1:34

DEPT. CLERK

BY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

THE STATE OF IDAHO,

Plaintiff,

vs.

Abraham Vargas,

Defendant.

DOB: [REDACTED]

Case No. CR-2010-2088

JUDGMENT OF CONVICTION AND ORDER
SUSPENDING SENTENCE AND GRANTING PROBATION

On October 12, 2010, the time fixed by the Court for pronouncing sentence upon the defendant, the Court noted the presence of the Prosecuting Attorney, Blaine Cannon, and the defendant with counsel, Brian Tanner.

IT IS ADJUDGED that the defendant has been convicted by a jury of twelve persons of the offense of Grand Theft by Possession, as charged in the Information, a violation of Idaho Code §§ 18-2403(4) and 18-2407(1).

The Court having asked whether the defendant had any legal cause why Judgment should not be pronounced against the defendant, and no sufficient cause to the contrary having been shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS FURTHER ADJUDGED AND ORDERED that the defendant be sentenced as follows to the custody of the Idaho State Board of Correction commencing on October 12, 2010:

Minimum period of confinement: 1 year
Indeterminate period of confinement: 2 years
Total unified term: 3 years

The Court **ORDERS** as follows:

Court Costs: The defendant shall pay court costs in the amount of \$125.50.

Credit for time Served: The defendant is given credit for a total of 2 days served in the county jail prior to the entry of this Judgment.

AND IT IS ORDERED that execution of the prison sentence of this judgment be suspended, and the defendant be placed on probation for an indeterminate period of time, not to exceed the term of suspended sentence beginning on October 12, 2010 under the control of the Idaho State Board of Correction, (I.C. § 19-2601(5), I.C.R. 33(d)), subject to the following terms:

Exhibit 1, General and Specific Conditions: Abide by the Court Ordered General and Specific Conditions of Probation attached hereto as Exhibit 1, which exhibit is by this reference incorporated herein.

IT IS FURTHER ORDERED that so long as the defendant abides by and performs all of the foregoing conditions, entry of judgment and sentence will continue to be **suspended**. Provided, however, that probation will not be terminated until the Court has both reviewed the performance of the probationer and has signed an order discharging the probationer. If any of the terms and conditions of probation are violated, the defendant will be brought before the Court for imposition of judgment and sentence.

IT IS FURTHER ORDERED that the parties return their respective copies of the presentence investigative reports to the deputy clerk of the court and use of said report shall thereafter be governed by I.C.R. 32(h)(1), (2), and (3).

IT IS FURTHER ORDERED that any and all bonds are hereby exonerated. However, if the defendant paid a cash bond, deposited by or on behalf of the defendant, the Clerk shall apply the money (cash bond) to the payment of the costs and fines imposed in this case and refund the surplus, if any, to the party posting the deposit. I.C. § 19-2923.

RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right: The Court advised the defendant, of the right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.C.R. 33(a)(3), I.A.R. 14(a).

In Forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

Sentenced and dated October 12, 2010.



MICHAEL R. CRABTREE
District Judge

CERTIFICATE OF MAILING

I, Tara Gunderson, the undersigned authority, do hereby certify that I mailed, by United States Mail on 10/12/10, one copy of the: JUDGMENT OF CONVICTION AND ORDER SUSPENDING SENTENCE AND GRANTING PROBATION as notice pursuant to Rule 77(d) I.C.R. to each of the following:

Prosecuting Attorney: Blaine Cannon

Defense Counsel: Brian Tanner

Mini-Cassia Criminal Justice Center

Idaho Department of Corrections

Idaho Department of Probation and Parole

Tara Gunderson
Deputy Clerk of the District Court
Cassia County, Idaho

By  Deputy Clerk

EXHIBIT I

COURT ORDERED
GENERAL CONDITIONS OF PROBATION
Imposed at the Request of Idaho Dept of Corrections
Idaho Code Sections 20-219, 19-2601(5) and ICR 33(d)

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Dept of Corrections. A.V.
2. **Laws and Conduct:** The defendant shall obey all municipal, county, state and federal laws. The defendant shall comply with all lawful requests of any agent of the Idaho Dept of Corrections. The defendant shall be completely truthful at all times with any agent of the Idaho Dept of Corrections. During any contact with law enforcement personnel the defendant shall provide their identity, notify the officer(s) that they are under supervision and provide the name of their supervising officer. The defendant shall notify their supervising officer of the contact within 24 hours. A.V.
3. **Residence:** The defendant shall not change residence without first obtaining permission from an authorized agent of the Idaho Dept of Corrections. A.V.
4. **Reporting:** The defendant shall report to his/her supervising officer as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the Idaho Dept of Corrections. A.V.
5. **Travel:** The defendant shall not leave the State of Idaho or the assigned district without first obtaining permission from his/her supervising officer. A.V.
6. **Extradition:** If the defendant does leave the State of Idaho, with or without permission, the defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return the defendant to the State of Idaho. A.V.
7. **Employment / Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his/her supervising officer. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the offender's specific situation and as approved by his/her supervising officer. A.V.
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. A.V.
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug or any substance that simulates the effect of an illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him/her by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by their physician or dentist. A.V.
10. **Firearms / Weapons:** The defendant shall not purchase, carry, posses or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to, knives with blades over two and one half inches in length.

Exhibit I

Defendant:

CR- 10 -

Vargas, Abraham
2088

Carrie Court

Rev. 2-10

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switch-blade knives, brass knuckles, swords, throwing stars and other martial arts weapons. Any weapons or firearms seized will be forfeited to the Idaho Dept of Corrections for disposal. The defendant shall not reside any location that contains firearms unless the firearms are secured and this portion of the rul is exempted in writing by the District Manager. D.V.

11. **Search:** The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority conducted by any agent of the Idaho Dept of Corrections or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches. D.V.
12. **Cost of Supervision:** The defendant shall comply with Idaho Code 20-225, which authorizes the Idaho Dept of Corrections to collect a cost of supervision fee. The defendant shall make payments as prescribed in his/her monthly cost of supervision bill. D.V.
13. **Associations:** The defendant shall not associate with any person(s) designated by any agent of the Idaho Dept of Corrections. D.V.
14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by any agent of the Idaho Dept of Corrections or law enforcement officer. The defendant may be required to obtain tests at their own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. D.V.
15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the Court or any agent of the Idaho Dept of Corrections. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the Court or any agent of the Idaho Dept of Corrections. The defendant may be required to attend treatment, counseling or other programs at their own expense. D.V.
16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the probation officer. The defendant shall allow the probation officer to enter their residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alter them to the approach of his/her probation officer. The defendant shall not keep any vicious or dangerous dog or other animal on or in their property that the probation officer perceives as an impediment to accessing the defendant or their property. D.V.
17. **Absconding Supervision:** The defendant will not leave the state or the assigned district in an effort to abscond or flee supervision. The defendant shall make himself / herself available for supervision and program participation as instructed by the probation officer and will not actively avoid supervision. D.V.
18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner and to the parties ordered by the Court. The defendant shall make payments as ordered by the Court or as designated in a Payment Agreement and Promissory Note to be completed with an agent of the Idaho Dept of Corrections. D.V.
19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement, except as allowed in Idaho Dept of Corrections policy and with the written consent of both the Court and the Idaho Dept of Corrections. D.V.

20. **Intrastate/Interstate Violations:** If allowed to transfer supervision to another district or state the defendant agrees to accept any violation allegation documents purportedly submitted by the agency/officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents.

A.V.

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific field office that provides his/her supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific field office. All additional rules will be explained to the defendant and provided to him/her, in writing, by an agent of the Idaho Dept of Corrections. A.V.

**The Following ADDITIONAL Marked TERMS and CONDITIONS Are Imposed
as a term and condition of probation in this case:**

 A. **County Jail Time to be Served:** Defendant shall serve A.V. days in the Mini-Cassia Criminal Justice Center as a term and condition of probation. Credit for time served previously awarded to Defendant shall not apply to this probation condition and time served under this condition will not be credited against Defendant's underlying sentence. Work release is approved, subject to the Sheriff's requirements including fees. I.C. § 20-614(4).

(☐) Defendant is remanded to the custody of the Sheriff forthwith.

(☐) Report to jail on _____, 20__ no later than _____ o'clock __m.

Accepted: _____

☒ B. **Discretionary Jail Time:** Defendant shall serve not more than 180 days in the Mini-Cassia Criminal Justice Center as a term and condition of probation, without bail. Jail time incurred on account of a probation agent's warrant and/or for absconding supervision does not count as discretionary time. Credit will not be given against the underlying sentence for discretionary time served. Work release is approved, subject to the Sheriff's requirements, including fees. I.C. § 20-614(4). Accepted: A.V.

 C. **Community Service:** The Defendant shall perform _____ hours of community service, as directed by the Probation Officer, to be completed prior to discharge from probation. A fee as required by Criminal Rule shall be paid to the Clerk of the Court in which Judgment entered in this case. ICR 33(d)(3). Accepted: _____

☒ D. **Immigration / Lawful Residency Status:** The Defendant is required to maintain or achieve lawful presence in the United States of America at all times. Failure to do so is a violation of probation and an arrest warrant will issue upon a showing that Defendant is in violation of any law regarding lawful residency, work, travel or presence in the United States. Failure to report for probation supervision caused by deportation or being taken into custody by Immigration and Customs Enforcement agency is grounds for violation of probation and issuance of a warrant for Defendant's arrest. Accepted: A.V.

 E. **Substance Abuse or Mental Health Counseling:** The Defendant is required to participate in any substance abuse and / or mental health counseling and/ or treatment recommended by the assessment attached to the pre-sentence investigation report or the Addendum thereto, or as directed by Probation Officer. The cost of such counseling and / or treatment shall be borne by the Idaho Department of Health and Welfare pursuant to I.C. § 19-2524(6), if applicable. Accepted: _____

☒ F. The Defendant is required to attend and complete a course of study in **Moral Reconation or Cognitive Self Change**. Accepted: A.V.

Exhibit I

Defendant: VARGAS, A.

CR- 10-2088

3

Rev. 2-10

000174

G. **Additional Terms and Conditions of Probation:** The following additional terms and conditions of probation are hereby imposed:

Accepted: _____

 H. **Mental Health Court: Special Terms and Conditions:**

The defendant shall immediately apply for admission into Mental Health Court, and shall comply with and satisfy all admission requirements, including the terms and conditions of the Mental Health Court Contract.

If the defendant is accepted into Mental Health Court, the defendant shall comply with all Mental Health Court rules and regulations, including the terms and conditions of the Contract and the supervision and control of the defendant's probation in accordance with I.C. § 19-2601(5.) shall be transferred from the Idaho Department of Corrections to the Fifth Judicial District Mental Health Court and its staff while participating in the Mental Health Court program.

Upon the defendant's successful graduation from Mental Health Court or the defendant's termination from such Court, and for any remaining period of probation, the supervision and control of the defendant shall be transferred to the Idaho Department of Corrections and subject to the provisions of Exhibit I to the Judgment .

In the event that the defendant is not accepted into Mental Health Court through no fault of his own, the defendant shall comply with all provisions and conditions of probation set forth in Exhibit I to the Judgment.

Accepted: _____

 I. **Sex Offender Probation:** In addition to the foregoing, the Defendant is required to comply with any and all terms and conditions of probation and treatment that may be required by the Probation Officer and / or the Idaho Department of Correction (including a separate and additional Sex Offender Agreement of Supervision, the terms and provisions of which are incorporated by reference into this Exhibit), together with any and all treatment terms and conditions required by the treatment program therapist.

Accepted: _____

I accept and agree to each of the above terms and conditions of probation set forth in Exhibit I.

Abraham Vargas
Defendant's Signature

Defendant's Printed Name: Abraham Vargas

Interpretation of this Document Provided by:

Exhibit I

Defendant: Vargas, A.

CR- ID - 2088

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

2010 NOV 12 AM 10:13

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

ABRAHAM VARGAS.,

Appellant,

v.

STATE OF IDAHO,

Respondent.

CASE NO. CR 10-2088

S.C. DOCKET NO. _____,

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, Blaine Cannon, Cassia County, P.O. Box 7, Burley, Id. 83318 AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment of Conviction to One Felony Count of Grand Theft by Possession entered in the above-entitled action on the 12th day of October, 2010, the Honorable Judge Crabtree, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a), I.A.R.
3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

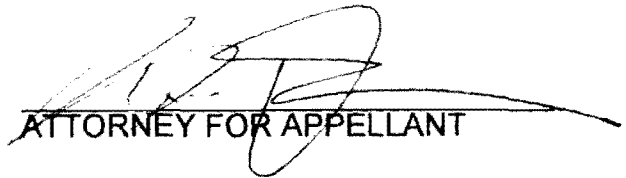
BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

- (a) The appellant contests the jury instructions and argues that a jury instruction should have been included which would have allowed the jury to consider salvage value in determining the total value of the pipe.
- 4. The appellant also requests the preparation of the following portions of the reporter's transcript as defined in I.A.R. 25(a):
 - (a) Jury Trial held on July 28, 2010 and July 29, 2010 at 9:00 a.m.
- 5. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):
 - (a) Any briefs or memorandums, filed or lodged, by the state, the appellate, or the court in support of, or in opposition to, the Judgment of Conviction.
 - (b) Any motions or responses, including all attachments, affidavits or copies of transcripts, filed or lodged by the state, appellant or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition; and
 - (c) Jury instructions submitted to the jury at trial and proposed jury instructions from the Appellant and the Respondent.
- 6 I certify:
 - (a) That a copy of this Notice of Appeal has been served on the reporter;

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

- (b) That the Respondent will be responsible for paying for the reporter's transcript.
- (c) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 10th day of November, 2010.


ATTORNEY FOR APPELLANT

BRIAN M. TANNER
Attorney at Law
516 Hansen St. E.
Twin Falls, ID 83301
Telephone: (208) 735-5158
Facsimile: (208) 734-2383
Idaho State Bar #7450

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 10th day of November, 2010,
caused a true and correct copy of the attached NOTICE OF APPEAL to be
placed in the United States mail, postage prepaid, addressed to:

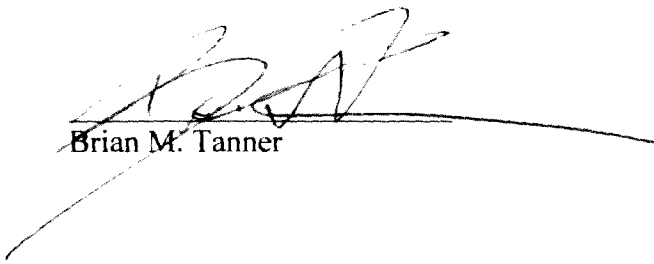
Abraham Vargas
1800 Almo Ave.
Burley, Id. 83318

Court Reporter for Judge Crabtree
1459 Overland Avenue
Burley, Idaho 83318

Cassia County District Courthouse
1459 Overland Avenue
Burley, Idaho 83318

Blaine Cannon
Cassia County Prosecutor
P.O. Box 7
Burley, Idaho 83318

Lawrance Wasden
PO Box 83720
State house mail room #210
Boise, 83720


Brian M. Tanner

In the Supreme Court of the State of Idaho

IN THE DISTRICT COURT OF
THE FIFTH JUDICIAL DISTRICT
CASSIA COUNTY, IDAHO

CASE NO. _____

FILED AT _____

DATE 11/24/10

M

Joseph W. Larsen
CLERK

STATE OF IDAHO,

Plaintiff-Respondent,

v.

ABRAHAM VARGAS,

Defendant-Appellant.

ORDER CONDITIONALLY
DISMISSING APPEAL

Supreme Court Docket No. 38274-2010

Cassia County Docket No. 2010-2088

The Appellant having failed to pay the necessary fee for preparation of the Clerk's Record on appeal as required by Idaho Appellate Rule 27(c) and fee for preparation of the Reporter's Transcript, if requested, as required by Idaho Appellant Rule 24(d); therefore, good cause appearing;

IT HEREBY IS ORDERED that this appeal be, and hereby is, CONDITIONALLY DISMISSED unless the required fees for preparation of the Clerk's Record and Reporter's Transcript, if requested, are paid to the District Court Clerk within twenty-one (21) days from the date of this Order.

IT FURTHER IS ORDERED that this appeal is SUSPENDED until further notice.

DATED this 22 day of November 2010.

For the Supreme Court

Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ORDER CONDITIONALLY DISMISSING APPEAL -- Docket No. 38274-2010

000180

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

P.O. Box 83720
Boise, Idaho 83720-0101

2010 DEC 15 AM 10:51

JOSEPH W. LARSEN, CLERK
Attn: KRIS
CASSIA COUNTY COURTHOUSE
1459 OVERLAND AVENUE
BURLEY, ID 83318

NOTICE OF APPEAL FILED (T)

Docket No. 38274-2010 STATE OF IDAHO v. Cassia County District Court
ABRAHAM VARGAS #2010-2088

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on NOVEMBER 18, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD and REPORTER'S TRANSCRIPT(S) must be filed in this office on or before MARCH 18, 2011.

The REPORTER'S TRANSCRIPT(S) MUST BE LODGED with the District Court Clerk or Agency ****35 DAYS PRIOR**** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

THE FOLLOWING TRANSCRIPTS (PURSUANT TO I.A.R. 25) SHALL BE LODGED:

JURY TRIAL 7-28-10 thru 7-29-10

For the Court:
Stephen W. Kenyon
Clerk of the Courts

12/10/2010 DB

000181

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,	)	Supreme Court Case No. 38274-2010
Plaintiff / Respondent,	)	District Court Case No. CR 2010-2088*D
vs.)	
ABRAHAM VARGAS,	)	CLERK'S CERTIFICATE OF EXHIBITS
)	
Defendant / Appellant,)	
_____)	

I, Joseph W. Larsen, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the following is a list of exhibits that have been lodged with the Supreme Court.

EXHIBIT NO.	DESCRIPTION	DATE FILED
Defendant's A	Santos Metal Recycling Log	7/29/10
State's #101	Color photo of Metal Piping	7/28/10
State's #102	Color photo of Metal Piping	7/28/10
State's #103	Color photo of Abraham Vargas' Driver's License	7/28/10
Defendant's A	Color photo of Metal Piping	4/23/10
Defendant's B	Santos Recycling Receipt	4/23/10
Defendant's C	Santos Meal Recycling Log	4/23/10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of Said Court
on the 30th day of March, 2011.

Joe W. Larsen
CLERK OF THE DISTRICT COURT

By: T. Pollard
Tammi Pollard, Deputy Clerk

CERTIFICATE OF EXHIBITS

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,)	
)	
Plaintiff / Respondent,	)	Supreme Court Case No. 38274-2010
)	
vs.	)	District Court Case No. CR 2010-2088*D
)	
ABRAHAM VARGAS,	)	CLERK'S CERTIFICATE OF EXHIBITS
)	
Defendant / Appellant,)	
_____)	

I, Joe W. Larsen, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the following is a list of exhibits that have been lodged with the Supreme Court.

Confidential Exhibits: Pre-Sentence Report
 Addendum to Presentence Investigation Report

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of Said Court
on the 30th day of March 2011.

Joe W. Larsen
CLERK OF THE DISTRICT COURT

By: T. Pollard
Tammi Pollard, Deputy Clerk

CERTIFICATE OF EXHIBITS

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

State of Idaho,)	
	)	Supreme Court Docket No. 38274-2010
Plaintiff/Respondent,)	
	)	District Court Case No. CR 2010-2088*D
Vs.)	
)	
ABRAHAM VARGAS,	)	CLERK'S CERTIFICATE
)	
Defendant/Appellant,)	
_____)	

I, Joseph W. Larsen, Clerk of the District Court, of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the foregoing documents in the above-entitled cause were compiled under my direction and are true and correct copies of the pleadings, documents and papers designated to be included under Rule 28, Notice of Appeal and the entire reporter's transcript of the Sentencing Hearing.

I do further certify that all exhibits offered or admitted in the above-entitled cause and confidential exhibits will be lodged with the Clerk of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court on the 30th day of March, 2011.

JOSEPH W. LARSEN
CLERK OF THE DISTRICT COURT

By 
Tammi Pollard, Deputy Clerk

CLERK'S CERTIFICATE

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,)	
)	
Plaintiff / Respondent,	)	Supreme Court Case No. 38274-2010
)	
vs.	)	District Court Case No. CR 2010-2088*D
)	
ABRAHAM VARGAS,	)	CLERK'S CERTIFICATE OF SERVICE
)	
Defendant / Appellant,)	
_____)	

I, Tammi Pollard, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that I have personally served or mailed, by X United States mail, ___ hand delivery, one copy of the Clerk's Record and Court Reporter's Transcript to the following Attorney's in this cause as follows:

Lawrence Wasden
Attention: Appellate Unit
700 West Jefferson Street
Boise Idaho 83720-0010

Brian Tanner
516 Hansen Street E
Twin Falls, ID 83301

IN WITNESS WHEREOF, I have hereunto set my hand the affixed seal of the said Court
this 9th day of May, 2011.

Joe W. Larsen
CLERK OF THE DISTRICT COURT

By: T. Pollard
Tammi Pollard, Deputy Clerk